

INSURANCE

PRINCIPLES AND PRACTICE

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P R E F A C E

The main reasons for the present attempt are two. Firstly, the subject of insurance is assuming an all-round importance in the modern world. It is prescribed for study in almost all the Indian Universities in under-graduate as well as post-graduate courses. A few attempts have been made by the Indian authors, still there is a great need for a comprehensive work on the subject. Secondly, the author had the opportunity of coming in contact with many managers, officers, agents and other persons engaged in insurance business and was greatly surprised to find the amount of ignorance which prevails even at high ranks. 'Believe it or not', there were managers of insurance companies who did not even understand the meaning of the conditions of the policies which they had been issuing for the last few decades! Again the selling personnel of Indian insurers is notoriously inefficient. The fieldman is unequipped with the knowledge of scientific foundations of insurance, the practical use of the security he offers, the plans and policies of his company, etc. The present work

is, therefore, intended to foster an understanding and helpfulness not only in students but in all others who are interested in insurance in some capacity.

The edition is an attempt to explain the principles and practice of Insurance in non-technical language so that the material might be available to all those who require a general knowledge of the subject. It is divided in six parts. Part I deals with the general principles of Insurance and the next three parts are devoted to the study of the main branches of insurance, viz., life, marine and fire. Throughout the book an attempt has been made to refer to the practice of Insurance in India for such branches in which the business has sufficiently developed. In India, the public, whatever the reasons be, is not insurance-minded. Further there is no statute law governing the insurance contracts. Due to these reasons, except in case of life assurance where the study mainly relates to practice in India, the reference has been made to the British practice. It is because of the fact that our law is mainly derived from and mostly based on British Law. Part V deals with all sorts of miscellaneous types of insurance some of which are very important, e.g., Motor Insurance, Workmen's Compensation Insurance and Accident Insurance. The first two have been treated with the background of Indian practice. This part includes the other types also, which though minor in view of their volume of business, are fantastically becoming popular in the West and specially in the New World. The last part relates to the history of insurance business in India, the position at present and the insurance legislation in India.

The author does not make any claim for originality of the entire material. In the preparation of this work, he has freely drawn upon various books, journals, newspapers and the material received from the various insurance companies. If he has made any contribution, it is to be found in the treatment of the material in a form suitable to the students' require-

ments. He wishes to avail himself of this opportunity of expressing his gratitude to the authors and writers of these books, etc., a list of which will be found in the Bibliography given at the end of the book. He takes this opportunity to thank his learned Principal, S. V. Desai, who was an unfailing source of help and inspiration to the author. His special thanks are due to his many friends and students who helped him in the preparation of this work in various directions.

The author is fully aware of the possible scope for the further improvements in the work. He will be much pleased to receive any criticisms and suggestions from the readers and will try to incorporate them in the next edition. He sincerely hopes that the book will prove to be of good help and value to the readers and he will feel greatly recompensed for his labour if he finds a favourable reception of his work by those interested in it.

June, 1949.

Mandal,

R. S. SHARMA.

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PART ONE

INTRODUCTORY

CHAPTER I

PRELIMINARIES

In day to day life the man is confronted with various risks. However great a genius he may be, it is not possible for him to foresee all the calamities that are in store for him and to provide for them in advance. Many happy lives are ruined either by the untimely death of the earning member of the family or by other disastrous calamities such as floods, fire, earthquake, war, accident, etc. which may take a heavy toll of human life and property. These risks are such which cannot be known in advance as to when they will happen and it is physically impossible for an individual to make provision against them by himself. Insurance is a device not to avert these risks but to mitigate their rigours on individuals.

Basis of Insurance

Every risk involves the loss of one or the other kind. The function of insurance is to spread this loss over a large number of persons through the mechanism of co-operation. The persons who are exposed to a particular risk cooperate to share the loss caused by that risk whenever it takes place. Thus the risk is not averted but the loss on its occurrence is shared by the members.

The significance of this fact will be clear by the following illustration. In a college, let us suppose that 400 students come to the college on cycles. By past experience it is found that every year, say, two cycles are lost. Thus it can be said, that out of 400 students any two will suffer the loss of their cycles, but who those two students will be is not known. Hence with this element of uncertainty each one of the 400 students is exposed to the risk of losing his cycle, the cost of which may be Rs. 150. The total

loss of the two cycles will be Rs. 300. To safeguard against this loss, all the 400 students may contribute equally to a fund of Rs. 300 by paying annas twelve each and whenever the cycles are lost, the sufferers will be paid Rs. 150 each out of the common fund. Every student undertakes to bear a definite monthly loss of one anna in exchange for a probable loss of Rs. 150 a year. Thus insurance makes it possible for a student to bargain an annual loss of Rs. 150, which though uncertain, is very probable, in exchange for a definite monthly loss of one anna. Twelve annas to compensate a loss of Rs. 150—what an ingenious device it is! *Prima facie* it seems almost a miracle but to the students of insurance it will be an unadulterated fact.

Thus insurance is a co-operative device to spread the loss caused by a particular risk over a number of persons who are exposed to it and who agree to insure themselves against that risk. The result is that each member substitutes the certainty of a small loss for the possibility of a large one.

Origin of Insurance

The origin of insurance is lost in antiquity but the insurance in its modern form appeared first in marine and land fields. Marine insurance was first introduced in Barcelona in the 13th century A.D. In early times, travellers by sea and land were very much exposed to the risk of losing their vessels and merchandise because the piracy on the open seas and highway robbery of caravans were very common. Besides there were risks of nature as well. Many times it happened that a ship leaving a certain port was never heard of, it might have been captured by the king's enemies or robbed by pirates or got sunk in the deep waters. Naturally the risks to owners of such ships were enormous and, therefore, to safeguard them the marine traders devised a method of spreading over them the financial loss which

could not be conveniently borne by the unfortunate individual victims. This cooperative device was quite voluntary in beginning, but now in modern times it has been substituted by a more scientific method according to which the specialists equipped with up-to-date knowledge of various sea routes undertake to issue marine insurance policies by charging a certain price for them. In this manner, marine insurance was born, to be followed, at a much later date, by life assurance, and, later still, by a whole host of various forms of assurance created by the complexity of modern business and social life.

The Insurance Organisation

As seen above, the insurance in the beginning emerged as a cooperative measure. All the members who wanted protection against a particular risk to which they were exposed, combined together and formed a voluntary group. Whenever the risk took place, the loss was made good by raising contributions from all the members of the group and was paid to those who suffered from the risk. But there were many defects in this cooperative plan. Firstly, the contribution of each party was not in proportion to his risk; secondly, the contribution could not be known in advance; and lastly, the number of contributions during the year were as many as the number of times the risk took place.

With the introduction of specialisation in all branches of commerce, insurance also passed into the hands of experts and now it has become a highly specialised business. Many insurance companies have sprung up which undertake to provide for the loss of human life and property caused by a particular risk in exchange for a price fixed in advance. Thus an insurance company is an important intermediary between persons who are liable to be affected by a risk but will not be affected and the persons who are also liable to the risk and who will be affected by it, though

they are not known personally in advance. It spreads the risk of the latter small class of people over the whole group and hence the impact of loss is very insignificant on each individual. The aim of all insurance is to provide against the dangers which beset human life and property. Those who seek it endeavour to avert disaster from themselves by shifting the possible losses on to the shoulders, who are willing, for pecuniary consideration, to undertake the risk thereof. Thus cooperation is replaced by the contract. In its modern form, the insurance may be defined as a contract between two parties whereby one party undertakes, in exchange for a fixed sum, to pay the other party a fixed amount of money on the happening of a certain event (death or attaining a certain age in case of human life), or to pay the amount of actual loss when it takes place through the risk insured (in case of property).

Terminology

The party who seeks protection against a particular risk is called the *insured*, while the party undertaking to protect the former is called the *insurer*. Mostly the insurers are Insurance Companies these days. The amount for which the risk is insured is called the *insured amount* or *policy money* or is also known as the face value of the policy. The amount which is paid by the insured to the insurer as a consideration of the insurance contract is called the *premium*, this is the price of the insurance. The document which contains the terms and conditions of the insurance contract is termed the *insurance policy*.

Insurance and Assurance. In theory various writers on insurance have tried to distinguish between these two words. Some hold that *insurance* can be used only where the risk, though probable, is uncertain i.e. it may or may not happen at all. The con-

tracts of indemnity are of this type e.g. fire and marine insurance. The building may or may not catch fire at all, the ship may meet a disaster or may reach the port of destination safely. In such cases the policy is not sure to become a claim, while *assurance* should be applied to such contracts where the policy is bound to become a claim i.e. where the risk insured against must happen sooner or later. This is so in life contracts. The man must die or must attain a particular age. The risk is certain. According to this view, the term *assurance* should be used for life contracts and *insurance* for indemnity contracts.

The other distinction attempted is that *insurance* comes from the insured while the *assurance* from the insurer. In other words, the insurer *assures* the insured of his life or property while the insured *insures* himself against his life or property.

Still another distinction drawn is that *assurance* denotes the principle whereas *insurance* denotes the practice.

The above distinctions, though in theory correct, do not hold good in practice. By usage both the terms are used indiscriminately all over the world and therefore it is needless to be very particular about their use. In practice the terms have become interchangeable.

Types of Insurance Organisations

There are various types of insurance organisations carrying on the business of insurance. It is upto the insured to choose any of them for the purpose of insuring his risk. Following are the broad classes of these organisations.

Stock Companies. They are the joint-stock companies formed to carry on the business of insurance under the Companies Act. A Stock Company is one, which is organised by the shareholders who subscribe the necessary capital to start the business. It is formed for the purpose of earning profits for the stock-

holders who are the owners of the concern. The management of the company is conducted through a Board of Directors elected by the shareholders from among themselves. Whatever profits are earned are shared by the stockholders. Any person desirous of taking an insurance can enter into a contract with the company after paying the required premium. He simply becomes a customer of the company and has nothing to do with either the management or the profits of it.

But due to the keen competition among the various companies to get more business, now it has become almost a settled practice to offer to the policyholders a share in the management as well as profits of the business, so much so that more than 90% of the business profits are shared by the policyholders and only the remainder is distributed among the shareholders. Most of the insurance business is carried on these days by the stock companies on the above lines.

Mutual Companies. A mutual company is a co-operative association formed for the purpose of effecting insurance on the lives or property of its own members. The policyholders are themselves the stockholders of the company. Each member is thus an insured as well as the insurer. He has the right to participate both in the management and the profits of the company. It may happen that the premiums collected are in excess of the amount needed to pay claims, in which case the excess is returned to the policyholders in form of dividends or bonus which is a type of saving. Thus it ultimately reduces the cost of insurance. Again as the policyholders are themselves the insurers, they will always try to see that the business is carried on sound lines and the expenses of management are kept minimum.

Speaking from strictly theoretical point of view the stock companies issue non-participating policies only while mutuals issue participating policies, but

in practice the former also issue participating policies and the latter too issue non-participating policies with the result that most of the companies are "mixed companies" these days.

Lloyds Associations. A Lloyds Association is an association of individual insurers known as 'underwriters'. Any person who wants to become a member of such an association has to pay a certain fee as a security for the regular payment of his liabilities. The association before accepting any person as its member will see that he is a man of good financial standing and business reputation. The name of the person so admitted is then put on the list of the underwriters of the association. The insurance is effected by the underwriters and not by the association. Anyone desirous of taking an insurance policy with the association has to approach the individual underwriters who will write only a part of the policy money individually. Thus one policy is underwritten by several underwriters, each becoming responsible only for the part of the policy money which he has underwritten. When the policy becomes a claim, the insured realises money from all the underwriters who had underwritten the policy according to their respective shares. In case any underwriter fails to meet his claim, the association will pay it out of the security which it had taken from the underwriter at the time of enlisting his membership.

The most prominent association of this type is Lloyds of London, which has served as a model for similar organisations. The Lloyds Association was originally founded in London in 1692. Though Lloyds Associations insure all types of risks they are chiefly noted for marine insurance and most of this type of business passes through them.

State Insurance. When the government undertakes an insurance enterprise and thereby assumes liability to pay the losses, it is called State Insurance.

Usually the state takes up the business of insurance in its hands in those fields alone which are most vital to the interests of the public. In some countries where the state had undertaken the general insurance business it has proved a failure; firstly because the management through government personnel is never efficient and secondly the volume of business could not be secured sufficiently in face of the competition from private companies. Again on the point of principle as well, it will mean too much of interference with private enterprise—so far the national economic structure is based on capitalistic lines. Generally the state undertakes social insurance and rest of the insurance business is carried on by private enterprise. In India, the Government runs the Postal Insurance Scheme for the benefit of the employees of Government and has recently passed the Employees' State Insurance Act to cover the industrial workers for accidents, sickness and maternity benefits.

Self-Insurance. When a person lays aside periodically sums which may be utilised to meet the loss caused by the happening of any contemplated risk, he is said to have effected self-insurance. Here the insured becomes his own insurer for the particular risk. But such a scheme can work only when the subject-matter of insurance is in large quantity so that the loss may be spread over it. Here the advantage to the insured is that out of the premium he has not to pay any commission or office expenses to any outside agency and therefore the cost of insurance will be less. A shipping company owning a large number of ships can profitably employ this scheme or a business firm instead of taking a Bad Debts Insurance Policy to cover the losses on account of bad debts may create a Bad Debts Reserve by allocating an annual amount towards the Bad Debts Reserve Fund and meet the losses of bad debts out of this fund whenever they arise. Most of the business firms adopt this policy.

CHAPTER II

MAIN FORMS OF INSURANCE AND INSURANCE CONTRACT

Essential requirements for insurance

As stated in the last chapter, an insurance is simply a device to spread the risk over a large number of persons exposed to it. In order that such a device may work equitably, produce the required benefits and be a successful business proposition, the following conditions are necessary:

1. *The insured must be subject to a real risk.* Whatever the subject-matter of insurance, be it human life or property, it must be potentially exposed to the risk. It means that on the happening of the event, against which the insured seeks protection, the subject-matter must be adversely affected. The event must be *prima facie* adverse to the interest of the assured otherwise it will amount to betting.

2. *The event should be one which involves some amount of uncertainty.* There must be either uncertainty whether the event will ever happen or not, or if the event is one which must happen at some time there must be uncertainty as to the time at which it will happen. The happening or not happening of the event must not lie in the hands of either the assured or the insurer otherwise there will be a great incentive for both the parties either to expedite or to delay the happening of risk respectively.

3. *The risk should not be a very minor one.* It must be sufficiently important to warrant the existence of an insurance agreement. If very small risks are insured the cost may be higher than the value of the protection given and it may still increase the cost of insurance to those who seek protection against really great hazards. That is why in marine insu-

rance the insurer is not responsible for small losses to a certain extent.

4. *The cost of insurance should not be prohibitive.* For the successful operation of any scheme of insurance the cost must be such as to be within the reach of nearly everyone, otherwise it will be confined to a very small section of people. Again from the business point of view also, the cost of management decreases proportionately with an increase in the size of the business. The low cost can be achieved when there is a large number of risks.

5. *The risk must be capable of approximate mathematical estimation.* The cost of insurance depends on the extent of the hazard. If the incidence of risk is small, the premium will be low. As the premium is to be fixed before the insurance is effected, it is necessary to have a fairly accurate estimate of the extent of risk. It is not necessary that the calculation should be absolutely accurate. This estimate is possible on the statistical data based on past experience.

The Contract of Insurance

In India, there is no separate law governing the insurance contracts. The Indian Contract Act governs the insurance contracts, while the Indian Stamp Act lays down the necessary stamp required for such contracts. Hence an insurance contract to be a valid contract must fulfil all the requirements of an ordinary contract. Section 10 of the Indian Contract Act defines a contract like this: "All agreements are contracts if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object, and which are not hereby expressly declared to be void."

Classification of Insurance Contracts

The contract of insurance may be classified according to various standards. The best classification

MAIN FORMS OF INSURANCE

for a clear understanding will be according to the nature of the interest affected by the happening of the event. In such a case, insurance contracts may be divided into four classes, namely (i) Personal Insurance (ii) Property Insurance (iii) Liability Insurance (iv) Guarantee Insurance.

Personal Insurance. In such contracts, the insurer undertakes to pay a stipulated sum to the insured on the happening of a certain event, in exchange for a premium. It includes Life insurance, Accident and Health or Sickness insurance. Here the measure of compensation is not the actual loss but a certain fixed amount settled by the parties in advance, because the actual loss cannot be measured in terms of money in such insurances as the subject-matter of insurance is either the life or health of the insured.

Property Insurance. To this class belong all those insurance contracts where the subject-matter of insurance is human property. Here the insurer undertakes to indemnify the assured against the actual loss suffered by the latter with regard to the subject-matter of insurance through the risk insured. The examples of property insurance are Fire insurance, Marine insurance, Burglary insurance, Livestock insurance, Hail insurance, Motorcar insurance, Lightning insurance, Rain insurance, etc.

Liability Insurance. Under this type, the insurer protects all such persons who are liable either to third parties or to their employees under the provisions of the law of the land e.g. Third Party insurance and Workmen's compensation insurance.

Guarantee Insurance. It is an agreement whereby the insurer agrees to indemnify the insured in a fixed amount against loss or damage arising through dishonesty, fraud, unfaithful performance of duty or breach of contract on the part of a third person having a contractual relationship with the insured. Fidelity insurance, credit insurance, etc. are guarantee insurance contracts.

All contracts of insurance, except personal insurances, are contracts of indemnity. Out of the above various types of insurances, life, fire and marine contracts are the most important. Again more than one insurance may be combined in a single policy e.g., Motor Insurance may be combined with Accident insurance or Third Party insurance.

Fundamental Principles of Insurance

Good Faith. In case of ordinary business contracts the legal maxim "caveat emptor" (let the buyer beware) prevails. It means that at the time of entering into a contract, it is regarded as the duty of the buyer to satisfy himself of the genuineness of subject-matter and the seller is under no obligation to supply information about it. But this principle does not apply to insurance contracts. An insurance contract is a contract *uberrimae fidei* or a contract of absolute good faith. This fundamental rule applies to all kinds of insurance. It means that the parties to the contract must make a full disclosure of all the material facts relating to the contract. A material fact is one which would affect the judgment of a rational underwriter in considering whether he would enter into a contract at all, or enter into it at one rate or another. What is material is a question of fact and it is for a law court to decide whether there has or has not been a full and frank disclosure and whether any particular fact is material. In the absence of good faith, the contract becomes legally void. As a rule, the duty to disclose the material facts lies on both the parties, the insured as well as the insurer, but in practice the assured has to be more particular about the observance of this principle because he is usually in knowledge of facts relating to the subject-matter more than anyone else.

However, the following facts need not be disclosed by the insured:—

- (1) facts which tend to lessen the risk,

- (2) facts of public notoriety,
- (3) facts which could have been inferred from the information disclosed provided that was sufficient to put the insurer on enquiry,
- (4) facts waived by the insurer either expressly or impliedly,
- (5) facts which are governed by the terms of the policy itself.

Insurable Interests. For an insurance contract to be valid the insured must possess an insurable interest in the subject-matter of insurance. Whoever has an interest which the law will recognise in the preservation of a thing, or the continuance of a life, may insure that thing or that life. Such an interest is called an insurable interest. The essentials of a valid insurable interest, whether in property, or in a right, or in respect of a potential liability, are as follows:

1. There must be a physical object (or a chose in action in some cases), on which the insured peril can operate, or there must be a potential liability which the insured peril may cause to come into force.

2. This object, or potential liability must be the subject-matter of insurance.

3. The insured must bear some relation thereto, recognised by law, in consequence of which he stands to benefit by the safety of the property, or the absence of liability and to be prejudiced by the loss of the property, or the creation of liability.*

Insurable interest is essentially a pecuniary interest i.e., the loss caused by happening of the risk insured must be capable of pecuniary estimation. No purely sentimental interest can be made the ground for a policy. Without an insurable interest an insurance contract is rendered void and becomes a wagering contract.

Whenever the insured event takes place the actual loss is paid to the insured. Therefore, the in-

* Batten and Dinsdale.

sured must have insurable interest in the subject-matter of insurance at the time of happening of the event. This applies to all indemnity contracts, because if he has no interest when the loss arises, he cannot be indemnified as he suffers no loss. This is not so in case of life insurance, here it is sufficient if the insured has the insurable interest when he takes the insurance. In case of fire insurance, due to extra moral hazard, it is very important to observe the principle not only when the event takes place but also when the policy is issued.

Indemnity. Indemnity is the controlling principle in insurance law. Except in personal insurances, the insurer contracts to indemnify the assured for what he actually loses by the happening of events upon which the insurer's liability is to arise and in no circumstances is the assured in theory entitled to make a profit of his loss. The essential purpose of insurance is to relieve the insured from a risk by transferring it to another and, therefore, in the event of loss its cash value only is to be paid to the insured. If he is to be paid more than the cash value of his loss something more has been done by the contract than merely to transfer his risk, he is offered not only freedom from risk but the chance of profit. If this is allowed the assured will gain by destruction of his property and he will be under constant temptation to destroy it, to commit an anti-social act. Thus considerations of public policy also dictate that the insurance contract must strictly be a contract of indemnity. Hence in all insurance contracts except in personal insurance, the insured can realise only the cash value of his loss and nothing more than this, though he might have insured for a greater amount.

The indemnity principle is not applicable to personal insurances. In such cases, the assured gets the stipulated amount on the happening of the specified event irrespective of any pecuniary loss. Strictly

speaking, in life insurance the loss can seldom be measured by pecuniary values. The obligation in a policy of insurance on 'life' is not based upon any doctrine of compensating the person for the event; money is no compensation for death. It is an absolute contract to pay, not amount of a loss or damage arising from a death, but a specified sum of money upon the termination of the life insured. Same is the case in accident insurance.

In all indemnity contracts, in case of over-insurance (i.e., where the assured takes a policy for a sum greater than the real value of the property), only the actual loss becomes payable and not the assured sum. If the property is under-insured (i.e., the insured amount is less than the actual value of the property insured) the insured is generally regarded his own insurer for the amount of underinsurance and in case of loss he shall have to bear the proportionate loss himself.

Subrogation. The doctrine of subrogation is just a corollary to the principle of indemnity. When a person insures his property against a particular risk, he can realise only the actual value of the loss of or damage to the property according to the principle of indemnity and, therefore, it follows that if the damaged property has any value left or the assured can recover the lost property or has any right against a third party regarding that property, these must pass on to the insurer. If the assured is allowed to retain them he shall have realised more than the actual loss which is contrary to the indemnity principle. This is known as the Doctrine of Subrogation. According to it, the insurer becomes entitled to all the rights of the insured regarding the subject-matter of insurance. It must be observed that the insurer is subrogated to the rights of the assured only after he has settled the claim. Again the insurer should exercise these rights in the name of the assured.

Double Insurance

When a person takes insurance on the same subject-matter with more than one insurer, it is called Double Insurance. In case of life, one can take insurance with as many insurers as one likes for any amount and on the maturity of policies the assured can realise the total amount from the different insurers. But in indemnity contracts, nothing more can be realised than the actual loss though the insurance might have been effected with more than one insurance company. Thus from the security point of view, a person can insure his property with two or three companies for the total value of the property and when the loss takes place he can realise it from all the companies. Of course, if his total insurance exceeds the actual value of the property it will be a case of over-insurance and he will not get more than the actual loss. He can, however, realise his loss from the companies in any order he likes and the companies will later on adjust their contributions according to the proportion of their insured amounts.

Re-Insurance

When an insurer transfers a part of his risk on a particular policy by insuring it with some other insurer, it is called Re-insurance. It is a contract between two insurance companies and the original insured is not affected by it. Some insurance companies conduct only the business of reinsurance.

Insurance not a wagering contract

Insurance contracts should be distinguished from wagering or gambling contracts. According to section 30 of the Indian Contract Act, all agreements by way of wager are void. In a wagering contract, the parties create the risk and want to make money on the happening or otherwise of an event, while in insurance the risk already exists and the purpose of contract is simply to transfer the risk. A contract of

insurance, unlike a wagering contract, is not an agreement to pay money on the mere happening of a certain event, but to compensate the insured for any loss suffered owing to its occurrence. Thus in a wager neither party has any interest in the contract other than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties, but insurable interest is the sole criterion of the validity of an insurance contract.

PART SECOND
LIFE ASSURANCE

CHAPTER III

THE LIFE CONTRACT

Though life assurance in its modern form commenced so late as about the sixteenth century, it has outstripped all other forms of insurance and to-day commands the greatest popularity and importance in the insurance world. In every country, most of the insurance business is conducted in the field of life assurance. In India, too, more than 60% of the insurance companies deal wholly or partly in life business. Due to the disintegration of the joint-family system, life assurance is bound to grow popular with the Indian people.

Life Assurance Contract

It may be defined as a contract, whereby the insurer, in consideration of a premium, paid either in a lump sum or in periodical instalments, undertakes to pay, an annuity or a certain sum of money, either on the death of the insured or on the expiry of a certain number of years. In the latter case, the payment is made to the assured himself, while in the former, it is made to his representatives. The premium once fixed is constant. It must be remembered that the life contract is not an indemnity contract and the undertaking on the part of the insurer is an absolute one to pay a definite sum on the maturity of policy, regardless of whether the death of the insured is the occasion of a pecuniary loss to the beneficiary. It is based on the ground that human relationships are not susceptible to commensuration by a monetary yardstick. Normally, one's own life to oneself is invaluable. There can be no measurement in monetary units of the sentimental loss caused by the passing away of near and dear relatives. The life insurance business recognises losses of this type and permits an

arbitrary amount of insurance, even though no actual financial loss will result from the death of the assured.

Fundamentals of a Life Contract

A life insurance contract must possess all the requirements of an ordinary business contract e.g., existence of an agreement, free consent of parties, their competence to enter into an agreement, lawful consideration, legal object, etc. In addition to these, the following requirements are most essential for a life insurance contract to be valid.

Good Faith

The contract of life insurance requires utmost good faith on the part of both the parties so that the person undertaking to shoulder the burden of risk may correctly ascertain the true nature and extent of it before fixing its price. They must make a full disclosure of all the facts material to the risk. The words 'material to the risk' mean any fact concerning the health, condition or physical history of the applicant which naturally has influenced the insurer in determining whether to issue the policy. It is immaterial whether the misrepresentation was intentional or accidental. For this purpose, the insured is to fill in a Proposal Form supplied by the Insurance Company. This form contains many questions with regard to the health and family history of the applicant who has to give correct answers to them. He has also to undergo a medical examination on points regarding his health and family history. Any misstatement will render the policy voidable at the option of the Insurance Company. This principle works as a great hardship to the beneficiaries when the policy has been in force for a long period, premiums paid regularly and the insurance company wants to avoid the contract on the plea of mis-statement made at the time of issuing the policy. In such cases, it becomes very difficult to prove or disprove whether a

particular statement made at the time of taking policy was true. Therefore, to obviate this hardship many companies provide for an indisputable clause according to which a policy becomes unquestionable after the lapse of a certain period. In India, section 45 of the Indian Insurance Act 1938 lays down that no policy can be called into question after the expiry of two years from the date on which it was effected on the ground of any mis-statement of a fact except when it was made wilfully fraudulent.

It must, however, be remembered that the duty to disclose the material facts rests not only on the assured but on the insurance company as well, though by nature of the circumstances the insured is more in knowledge of facts about the life to be insured, and therefore, he is to be more particular about it.

Insurable Interest

The insured must have an insurable interest in the life to be insured if the policy is to be valid. A person to have an insurable interest must stand in such a relation to the event insured against that he would suffer a pecuniary loss if that event actually happened. Any one, therefore, who has a pecuniary claim against another or a legal right to support him, has an insurable interest in the life of that other. It is sufficient, however, that such interest exists when the policy is taken.

In considering the question of insurable interest, the policies may be divided into two classes. (1) policies on the life of the assured himself, and (2) policies on the lives of third parties. Regarding the first type of policies, it is recognised that an individual always has an insurable interest in his own life and, therefore, can take an insurance policy on his life to any extent. The loss to one or one's dependants due to one's death cannot be measured in terms of money and, therefore, no limit can be placed to the amount of insurance that one may take on one's own life.

Thus theoretically one can take a policy to any unlimited amount on one's own life, but in practice no company will issue a policy for an amount larger than seems suitable to the circumstances and means of the applicant.

Life assurance can also be effected on the lives of third parties provided the applicant has an insurable interest in the life to be assured. Such third parties must have some relationship with the proposer—be it family or commercial. In case of family relationship, some of the relations are presumed to have insurable interest e.g., a husband and wife have an insurable interest in the life of each other so that one can take an insurance policy on the life of the other. In case of other relations, mere relationship or ties of affection are not sufficient to warrant the existence of insurable interest, but in addition to this, the applicant must have a reasonable expectation of financial benefit from the continuance of the life of the person to be insured or of financial loss from his death. The interest need not be capable of exact pecuniary estimation, nor need it amount to a legal right; but it must be based on value and not on mere sentimental considerations.* Thus a son can insure his father's life only when he is dependent on him. Similarly, the father can take an insurance policy on his son's life only when he is dependent.

An insurable interest may arise as a result of commercial transactions as well. In case of blood relationship, the amount of the policy is usually limited only by the circumstances of the applicant and the willingness of the company to issue it; but in case of business relations, the amount of insurance must correspond with reasonable accuracy to the extent of risk involved. Thus the insurable interest in these cases, is not an absolute amount but limited by the

* Maclean

THE LIFE CONTRACT

cash value of the insurable interest. Hence, a creditor can take an insurance on the life of his debtor to the amount of his debt plus some additional charges or account of premiums and interest. Similarly, a partner can insure the life of another partner to the extent of the latter's capital so that in case of his death his share in the business may be paid out of the policy money without seriously upsetting the business resources. Similarly, an employer has an insurable interest in the life of his contractor, a corporation has an insurable interest in the life of a senior officer whose death might affect the profits of the business. A trustee has an insurable interest in respect of the interest of which he is a trustee. But a debtor has no insurable interest in the life of his creditor. Any one, who by contract is liable to pay any money in case of the loss of anything, has an insurable interest in that thing. Thus an insurer has an insurable interest in the subject-matter of a policy which will support a re-insurance.

Life Assurance not a wagering contract

There was a time when insurance was considered to be immoral as "gambling in human life". This idea arose because cases were not wanting when policies were taken where no insurable interest existed and where the insurance was taken solely for speculative purposes. People used to bet upon the lives of kings, national leaders or of some prisoners, particularly if charged with an offence that would call for capital punishment upon conviction. If a well-known person fell seriously ill, a huge amount of insurance would at once be written insuring his life. Thousands of persons without any other interest in the assured's life would be financially interested in his immediate death. But now with the insistence on the existence of insurable interest, life insurance has remained an item of economic necessity and cannot be regarded as a 'wager'. Insurance is just the opposite of gam-

bling. In gambling, the profit is sought to be made through chance, while the object of life assurance is just the opposite—the avoidance of loss arising through chance. In gambling, neither of the parties is subject to a particular risk before entering into contract but the risk is created through contract in order to make a profit out of it; but in case of insurance, the insured is already subject to a certain risk prior to the contract but transfers it on the other party by the contract. Therefore, insurance is regarded as a high social service and is encouraged by wise public policy while, speculation being an anti-social activity is prohibited by legislation.

Difference between life and other forms of insurance

1. The event insured against in life assurance is a certain event, the only uncertainty being the time when the event will occur. But in case of fire and marine insurances, the event insured against may or may not take place at all or may take place wholly or partly. Thus in life assurance, every policy will become a claim sooner or later but it is not so in other insurances.

2. Life insurance is a contract to pay an absolute amount on the maturity of the policy and there is no possibility of partial loss, but the other insurances are indemnity contracts where only the actual amount of loss will be payable irrespective of the assured sum.

3. In life insurance, the hazard increases from year to year. This happens in fire and marine insurances also but there the subject-matter may be kept in good condition by repair or the replacement of worse parts; but in life assurance, the chances of death go on increasing with increased age whatever precautions may be taken by one about one's health. In spite of the higher hazard from year to year, the same premium rate is charged in life contracts.

4. The classification of risks is generally more simple in life insurance than in other forms of insurance. Here all the lives are divided in three groups—standard, sub-standard and uninsurable. But in case of property insurances, the classification is more complex, e.g., in marine insurance, the risks may be divided according to the type of vessel, voyage, season, etc. Same is the case in fire and other insurances.

5. In most forms of insurance, the policy is taken for one year or even for a shorter period but in life contracts the insurance is taken for very long periods.

6. In life insurance, the premiums are charged generally on level-premium plan which means that the premiums charged in the initial years of the policy are higher than the actual cost of insurance; but in fire and marine insurance contracts, the premiums are just sufficient to cover the actual cost of insurance. Due to this special feature of life assurance, it contains both the investment and protection elements but in the fire or marine contracts there exists the protection element only.

7. In life assurance, the insured must have the the insurable interest when the policy is taken; but in marine insurance, he must have it when the loss arises. In fire insurance, the insurable interest must be present at both the times, when the policy is taken and when it becomes a claim.

CHAPTER IV

VARIETIES OF LIFE ASSURANCE AND ANNUITY CONTRACTS

Every contract involves rights and liabilities for the contracting parties. Greater rights involve greater liabilities. It is for the parties to choose them. If a person wants to enjoy more rights he has to accept, in turn, greater liabilities. All insurance contracts carry with them rights and liabilities of various

types and it is for the insured to select any out of them. He will naturally select a contract which is most suitable to his own circumstances. The rights are in the form of receiving the assured sum (when, how and how much), and the liabilities are in the form of payment of the premium. The insurance companies have devised various types of policies i.e. contracts which will suit the varying requirements of different people. No particular policy can be regarded as better or cheaper than another because the insurance companies calculate the premiums for all policies on the same mathematical principles. The premium for a policy is just the price of the rights and privileges conferred by it. Therefore, from the point of view of the company, all policies are alike but for an assured, that policy alone will be best which meets his requirements and fits his pocketbook. The varying contingencies under which the benefit is payable and length of time and manner in which the premium is payable are combined in various forms to make up the contracts offered by the insurance companies.

Special Feature of Life Assurance

The function of every insurance is to provide a coverage against a risk. The assured after paying the premiums feels a sense of protection, that if the event happens he shall not suffer the loss. This is called the element of protection. All indemnity insurances provide only the protection against risks, but a life assurance has something in it more than the mere element of protection. It contains the element of investment as well. If the assured does not die within a fixed period, he shall get the assured sum. He is not only protected against the risk of early death but also gets the assured sum if he survives. Thus life assurance has a twofold function. It undertakes to replace income to the dependants of a policyholder in the event of his death, and to replace income to the policyholder himself and his

dependants in old age. To the extent that life insurance is purchased for protection, it is a contract of insurance. To the extent that it is purchased as a source of income, it becomes an investment.

The two elements of protection and investment exist in various degrees at different times in the same policy and at the same time in different policies. A shrewd policyholder will choose the policy best suited to his needs in particular. There are numerous forms of policies designed to fit specific needs. Some of the important forms of policies are discussed below.

Whole Life and Endowment Assurance

The policies may be divided according to the time which they have to run. If the policy is to run for the entire term of life of the assured it is called *whole life* or *ordinary life* policy. Under the terms of such a policy, the assured sum becomes payable to the beneficiary only at the death of the assured and he has to pay the premiums regularly throughout his life. It is most suitable to those persons who require insurance for an indefinite period. The premium is also low in comparison with other types of policies. This is the best insurance available for family protection after death. The greatest disadvantage of this policy is that the premiums are continued to be paid even in the old age of the assured when he has probably retired from service or business.

On the other hand, if the policy is to run only for a limited period or upto a particular age, it is called *endowment life* policy. Here the policy money becomes payable on the expiry of a fixed term (known as endowment term) or at death whichever is earlier. The premium is payable till the date of maturity of the policy, i.e., when the policy sum becomes payable. In this plan, the disadvantage of whole-life policy to pay premiums during old age does not remain, as the premiums are payable only upto a particular age. It serves as a good provision for old age or for the family

protection in case of early death. The premium rate is a little higher in endowment assurance than that in whole-life assurance. It is because of the greater privileges conferred under it. This is the most popular form of insurance.

Policies according to the method of premium payments

The policies may be divided according to the method of payment of the premiums. Usually the premium is paid regularly at fixed intervals so long the policy remains in force. This is called a *Regular Premium Policy*. The regular interval is generally one year but can also be made half-yearly, quarterly or even monthly. Any premium payable for a fixed period is paid in advance at the beginning of that period. The rates of premium are generally quoted on an annual basis, but they can be converted into half-yearly rates by halving the annual rate and adding to it a small amount due to loss of interest on half of the premium during the first six months, the increased office expenses and the possible loss of one half-yearly premium in the year of death. On the same basis, an annual premium can be converted into quarterly or monthly premiums. On account of keen competition, the companies now-a-days offer greater facilities to the policyholders for the payment of premiums and, therefore, many of them charge simply half, quarter or one-twelfth of the annual premium as the premiums are payable half-yearly, quarterly or monthly respectively. They do not add anything extra on account of the above items but allow some reductions in premiums if they are annual or half-yearly.

In case of a regular premium policy, the premiums are paid so long the policy remains in force and this works as a great hardship specially in a whole-life policy where the premiums have to be paid even in old age in spite of the assured's dwindling earning capacity. To remove this hardship, *limited premium payment policies* are issued, under which

the premiums are payable only in a fixed number of instalments or upto a certain age. In case of a whole-life policy by limited premiums, the premiums are payable upto a specified number of instalments (or until prior death) and the policy money becomes payable on the death of the assured. It is an ideal policy for providing assurance protection as a family provision. The policyholder can arrange the premiums to cease at the age when he expects to retire from business or service. In case of an endowment assurance by limited premiums, the payment of premiums ceases even earlier than the expiry of the endowment term.

The protection element in limited payment policies is less than in the ordinary life form and, therefore, the investment portion is greater. Whether one policy will be cheaper than the other in an individual case will depend on the time lapsed before death occurs. If the assured should be so unfortunate as to die shortly after the policy is issued, he has, of course paid more for the protection in the limited payment plan. On the other hand, however, if his life exceeds the usual span he has paid less in this plan. Thus there is no presumptive financial advantage as between one form or the other. Choice depends on circumstances and personal preference. Some persons prefer the limited-payment plan because there is a definite date for the termination of the premiums, while others prefer the ordinary life policy as it affords the maximum permanent protection for a given outlay.

The extreme development of this class of assurance is found in the *single premium policy*, where the assured is required to pay only one premium at the beginning of the contract. The premium under this plan is the highest. The protection element is least in this plan and the investment element is correspondingly very great. The advantage of this form is that the insured is free from the trouble of making any future payments of premiums as there remains

no liability on his part any longer. Again if he happens to live to an advanced age, his single premium would be less than the total he would have paid as regular premiums. It also furnishes a good method of making gift of life insurance policy. But as the premium is so high under this plan, few persons are willing and able to pay it in one instalment. Further, if the insured dies at an early age, his single premium would be far greater than the total payments under a regular plan. Therefore, such a policy is taken either by rich persons or by speculators who feel very uncertain about their future income.

For situations requiring a large amount of insurance immediately at the lowest possible premium cost, insurance companies have devised special coverages under which premiums usually start very low in comparison to the cost of an ordinary life policy for the same amount. Such a form of insurance is called *early-reduced-premium policy* or *modified life policy*. Under this plan, the premiums paid for the preliminary period, which is usually 3 or 5 years, remain low either at the same figure per year or at increasing amounts year after year and after the preliminary period is over the premium is greater for the remainder of the policy. The premium after the expiry of the preliminary period is more than the level premium at the original age of issue but less than the rate at the attained age at the time of such expiry. The low cost in the early years is compensated for at a slightly higher level premium during the remaining period of the policy. The early reduced premium policy is designed to meet the needs of the person who has just started his career with a low income but expects a good increase in future. This policy enables him to insure for a sum beyond his means under a full premium table at a lower cost at the time of effecting the assurance and the premium is increased at a time when he is well able to afford it.

Sometimes a policy is issued where the low premiums are not limited to the initial period but it becomes a regular feature of the policy so much so that in the beginning the premiums are low but go on increasing year after year for the rest of the period of policy. It is called as *increasing rate policy*. It is intended for persons who at present cannot afford to pay the higher rates on permanent regular plans for an adequate amount of insurance but who hope to be financially better off in a few years.

Policies according to the method of payment of the assured sum

In all the above types of policies, it is presumed that the policy money becomes payable in one lump sum when the policy matures. This is the most common arrangement. But to suit the varying needs of the different policyholders more convenient methods have been devised by the insurance companies. According to one arrangement, the assured sum becomes payable on the expiry of a fixed term of years, as 10 or 20, after the date of maturity of the policy, and during this term, known as 'investment period', the insurance company pays to the beneficiary interest on the assured sum—generally at 5% per annum. Such a contract goes by the name of *5% Debenture Policy*, or *5% Guaranteed Income Policy*, or *5% Gold Bond Policy*. The advantage of this plan is that since beneficiaries have little financial experience, they might lose benefit of the provision by an imprudent investment of the assured sum or through wasteful expenditure. Therefore, the sum is retained with the company for the investment period during which the wife may get some experience and the 5% interest will be a good income during the minority of the child, whom the assured might have left at his death. Because of the guarantee of a high interest rate, the premium charged is also slightly heavier than that under the ordinary plan.

Another variety is to make the policy money payable, not in one sum but by a fixed number of equal annual instalments (ten or twenty in number) running from the date of the maturity of the policy. The premium for such a policy is less than that for an ordinary policy of the same amount, as the assurance company is able to earn interest on the decreasing balance unpaid from year to year, to which interest the beneficiary has no claim. This type is known as *instalment life assurance*. It is also possible to extend the plan further by guaranteeing the payment of the sum assured by a fixed number of instalments, and further providing that if the beneficiary survives the instalment period, the annual payment will be continued until the death of the beneficiary. The above varieties are available in both the whole life as well as endowment assurances.

Policies on more than one life

When the policy is taken on a single life, it is called a *single life policy*. Assurance can, however, also be effected on a group of two or more lives. It is called *joint life assurance*. Under a joint life policy, the assured sum becomes payable on the first death to the survivor or survivors, i.e., the policy remains in force so far the lives assured remain joint. The most common form is that made on two lives, as husband and wife, payable to the survivor on the death of either party. It is also utilised in case of two or more partners who take a joint-life policy so that on the death of a partner, his share of capital and profits in the firm may be paid out of the policy money, thereby keeping the capital of the firm intact. Of course, on the death of a partner the surviving partners have to take again a new joint-life policy for themselves.

Joint-life policies may be effected on the whole-life or endowment plan with or without the limited payment feature. In case of *joint-whole life assu-*

rance, the policy money becomes payable on the happening of the first death, but in case of *joint-endowment life assurance*, the policy money becomes payable on the expiry of the endowment term or on happening of the first death, whichever event takes place first. In theory, joint-life policies may be taken on any number of lives but because of practical difficulties and expense, few companies are willing to issue joint policies which cover more than three or four lives. The greater the number of lives covered, the higher will be the rate of premium, as the chances of death of one person amongst many are greater than amongst two.

When two or more lives are assured under a single plan but the policy money becomes payable on the happening of the last death it is called *last survivor assurance*. The policy remains in force so long a single person from the group remains alive and the assured sum becomes payable on the death of the last survivor. In such a policy, the premium is lower than that in a joint-life policy. It is suitable for those persons who feel certain about their income so long they are alive either jointly or as survivors but want protection for the dependants after all the insured persons have died. This form of assurance is not very common.

"With Profit" and "Without Profit" Policies

The policies can also be divided according to the right, or otherwise, to share in the profits of the company. If they carry this right, they are called *with-profit* or *participating* policies but if they do not entitle the policyholder to share in the profits of the company, they are called *without profit* or *non-participating* policies. Under the participating plan, the policyholder does not definitely know what the premium is to be. Rather, he is offered a policy with maximum cost of coverage and the minimum to be determined by the success of the company. In case

of non-participating policy; the premium cost must be estimated more closely. The profit returned to the participating insurants is termed 'bonus'. Under the impact of keen competition, most of the companies now issue 'with-profits' policies and as high as 90 per cent of the profits is distributed to the participating policyholders.

Other Classes of Assurance

Pure Endowment Assurance

Under this plan, the policy money becomes payable only if the assured survives the endowment term, nothing being payable if death occurs previously. The rate of premium in such a plan is lower than that in ordinary endowment policy. It is best suited to those persons who do not feel any need of family provision after their death. Strictly speaking, pure endowment is not a life assurance plan as it does not protect the death. Sometimes pure endowments are issued on the lives of children to provide funds for college education.

The above form is known as "without return", but there is another plan, known as a pure endowment "with return", according to which, the premiums actually paid, or a considerable portion of them, are returned to the beneficiary of the assured, if he dies during the endowment term.

Double Endowment Assurance

Under the terms of this contract, the insurer agrees to pay to the assured double the amount of the insured sum, if the latter survives the endowment period, but if the assured dies during the endowment period the actual assured sum alone is to be paid to the beneficiary. Thus it is a combination of ordinary endowment and pure endowment without return plans. Here survival brings the double benefit. The premiums under this plan possess the unusual feature of being same for different ages at entry into assu-

rance, if the different policies are taken for the same term and the same sum. Of course the premium for a double endowment assurance is higher than that for an ordinary endowment. The scheme is more suitable to persons who, on account of some physical defect or hazardous employment are not granted a whole life or endowment assurance without an extra charge.

Temporary Assurance

It provides assurance for a limited term only, usually ranging from one to seven years. Under a *Temporary Assurance Policy*, the assured sum becomes payable if the assured dies within a certain term, but if he survives the term nothing is payable. The benefit accrues to him only if he dies during the term and, therefore, it is also called *term assurance*. It is just the reverse of a pure endowment assurance. The premium is naturally very low in this plan. Such a policy is certainly not suitable for either a family or old age provision, and is, in fact, utilised in relation to loans on personal security, to secure repayment of a debt if the borrower dies during the period of loan, and it suits persons going abroad on short trips. The young professional man with high need and low present income, but excellent prospects of better income in the future, can use temporary insurance to advantage.

Term policy was the first type of policy to enter the life assurance field. It contains simply the element of protection like other indemnity contracts. It will be noticed that an ordinary endowment assurance is a combination of a term assurance and a pure endowment without return, both running for the same period.

Convertible Term Assurance

A convertible term policy embodies a special provision giving the assured the right to get his policy converted into a whole life or endowment assurance

of non-participating policy, the premium cost must be estimated more closely. The profit returned to the participating insurants is termed 'bonus'. Under the impact of keen competition, most of the companies now issue 'with-profits' policies and as high as 90 per cent of the profits is distributed to the participating policyholders.

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The above form is known as "without return", but there is another plan, known as a pure endowment "with return", according to which, the premiums actually paid, or a considerable portion of them, are returned to the beneficiary of the assured, if he dies during the endowment term.

Double Endowment Assurance

Under the terms of this contract, the insurer agrees to pay to the assured double the amount of the insured sum, if the latter survives the endowment period, but if the assured dies during the endowment period the actual assured sum alone is to be paid to the beneficiary. Thus it is a combination of ordinary endowment and pure endowment without return plans. Here survival brings the double benefit. The premiums under this plan possess the unusual feature of being same for different ages at entry into assu-

rance, if the different policies are taken for the same term and the same sum. Of course the premium for a double endowment assurance is higher than that for an ordinary endowment. The scheme is more suitable to persons who, on account of some physical defect or hazardous employment are not granted a whole life or endowment assurance without an extra charge.

Temporary Assurance

It provides assurance for a limited term only, usually ranging from one to seven years. Under a *Temporary Assurance Policy*, the assured sum becomes payable if the assured dies within a certain term, but if he survives the term nothing is payable. The benefit accrues to him only if he dies during the term and, therefore, it is also called *term assurance*. It is just the reverse of a pure endowment assurance. The premium is naturally very low in this plan. Such a policy is certainly not suitable for either a family or old age provision, and is, in fact, utilised in relation to loans on personal security, to secure repayment of a debt if the borrower dies during the period of loan, and it suits persons going abroad on short trips. The young professional man with high need and low present income, but excellent prospects of better income in the future, can use temporary insurance to advantage.

Term policy was the first type of policy to enter the life assurance field. It contains simply the element of protection like other indemnity contracts. It will be noticed that an ordinary endowment assurance is a combination of a term assurance and a pure endowment without return, both running for the same period.

Convertible Term Assurance

A convertible term policy embodies a special provision giving the assured the right to get his policy converted into a whole life or endowment assurance.

at an increased premium corresponding to the age at conversion without any further medical examination. The assured can also get his policy converted as from its original date at the premium rate corresponding to the age at the original date of issue, but he shall have to pay the differences in past premiums and interest thereon. The option of conversion must be exercised at any time except during the last two or three years. The advantage of this policy is that during the term the assured might have deteriorated in health but in spite of it he is granted whole-life or endowment assurance. These policies are particularly good for young men having yet their way to make in the world, but whose prospects nevertheless are promising.

Renewable Term Assurance

A Renewable Term Policy is one that contains an option to renew the term policy for a further term, usually of the same length without any medical examination. Renewable term policies may also be convertible to permanent plans as described above.

Decreasing Term Assurance

This type of policy is merely a term assurance with a diminishing sum assured each year. It is commonly effected in connection with loans that are repayable by instalments. A debtor who agrees to pay to his creditor his debt by regular instalments takes this policy with an idea to place it as a security against his debt. The assured sum goes on decreasing as the instalments are paid and with that the premium is also reduced. In case of death of the debtor during the term, the assured sum standing on that day will be payable to the creditor and this will be equal to the balance of debt.

Contingent Assurance

It is also known as *contingent survivor assurance*. Under this plan, the policy money becomes payable if

two or more lives die in an assigned order of time. Suppose A is entitled to a property only if B dies before A; in such a case A is said to have a contingent interest in the property. If, however, A dies before B, his interest fails. Therefore, to cover this risk A may take a contingent assurance policy on his own life, according to which the assured sum will become payable, if A dies during the lifetime of B (known as "counter life"). On the other hand, if B dies during the lifetime of A, the contract comes to an end and the premiums paid are forfeited to the company. A policy can similarly be effected when more lives are involved.

Family Protection Assurance

A recent development of life assurance is the issue by most companies of a type of policy combining a decreasing term assurance and a whole life or endowment assurance. These policies have become very popular, most of them being primarily designed for the protection of a family or other dependants. They are known as "Family Protection," "Perfect Protection," "Family Safeguard," or "Family Income" policies. The provisions of these policies are as follows:—

- (a) The policy is taken for a fixed term of years, usually 20 years.
- (b) If the assured dies before the expiry of the term,
 - (i) The beneficiary gets a fixed annual income equal to 10 or 15 per cent of the basic sum assured from the date of the assured's death for the remaining period of the term; and
 - (ii) The full assured sum is also payable at the end of the term (calculated either from the inception of the contract or from the date of death, as originally agreed).

- (c) If the assured survives the term, no instalment is paid but the full assured sum is payable either at death, if the contract is for the whole life, or in case of an endowment assurance at maturity or on previous death.

The above arrangement is most suitable for a young married man, who can make provision for a guaranteed income to his wife in case of his early death and a good sum will be available after a particular time probably when the eldest son is ready to enter business or for higher education.

Annuity Contracts

In addition to the life assurance, the companies issue life annuities as well. *A life annuity may be defined as a contract whereby the insurance company agrees, in consideration of a certain payment or payments, to pay to the beneficiary, a fixed regular income during a given status.* The "status" may be the duration of one or more than one life. The person, during whose life the annuity is paid, is called the *annuitant* or *nominee*. The price of the annuity paid by the annuitant at the beginning of the contract is called the *premium, consideration* or *purchase money*. The periodical payment to be made by the insurance company is called the *annuity*. This is usually paid annually but can also be paid half-yearly, quarterly or monthly.

Annuity is suitable to a person who does not want to create any family provision but wants to enjoy the whole of his wealth himself during the old age. Such a person may keep the money with himself or invest it in suitable investments and distribute it over the rest of the period of his life; but this course is always full of uncertain dangers because for an equal distribution of his capital over the remaining period of life he has to estimate its duration which may not be absolutely correct in his individual case. If he underestimates it, he may have spent his whole capital

within a short period and may have to starve for the last few years of his life; on the other hand, if he errs on the other side in his estimate, he might leave quite a good amount of money unspent after his death and which he could have best utilised through greater enjoyment had he known it beforehand. Therefore, to enjoy the maximum advantage of his capital, he can safely rely on an assurance office by purchasing an annuity which will be paid to him till his death. A life insurance company, undertaking a multitude of such contracts, is in a better position to estimate the period for which an annuity taken at a particular age has to run. For the same annuity, the premium at a lower age will be higher, or to say it in other words, the same premium will purchase a smaller annuity at a lower age than at a higher age. Thus a life annuity is just the reverse of a life assurance. In the latter, the price is paid regularly for the whole life (if it is a life policy) and the benefit accrues in one lump sum on the assured's death; but in case of an annuity, the price is usually paid in one lump sum and the benefit accrues in instalments until death. Again a whole-life policy provides protection against death and the benefit accrues to the person other than the assured, but an annuity is exclusively meant for provision in old age and the benefit accrues to the assured himself. The various types of life annuities are discussed below.

Immediate Life Annuity

This type of annuity, also called the *simple life annuity* or *straight life annuity*, is the simplest form sold by life assurance companies. It provides an income throughout the entire life of the annuitant. The premium is paid in one lump sum at the inception of the contract. The annuity payments may be yearly, semi-annually, quarterly or monthly and the first annuity becomes payable immediately after one year, six months, three months or one month respectively after purchase and hence they are called *imme-*

diate annuities. The more frequently the instalments are payable the greater becomes the cost of annuity, since the loss to the annuitant in the year of death is diminished and also because of greater expenses and loss of interest to the company.

Deferred Annuity

Here the annuity payments do not commence immediately after the purchase but only after a stated period of years. The deferred life annuity may be purchased either by a single premium at the outset or by periodical premiums payable during the whole or part of the deferment period. In the simplest form of deferred annuity, nothing whatever is payable by the company if the annuitant happens to die before the date upon which the first payment of the annuity falls due.

Annuities are generally provided for old age and during this period it is found from experience that females have a greater vitality than the males, and, therefore, the annuity rates are quoted at higher rates of premium for females than for males.

Refund and Cash Refund Annuities

The above forms of regular annuities work as a great hardship if the annuitant happens to die either before the first annuity becomes payable or very soon after only a few annuities have been paid because the annuity payments cease at the death of the annuitant. To avoid the possibility of such serious loss to the beneficiary, many companies issue refund and cash refund annuities. Under the *refund annuity*, the company undertakes in the case of an early death of the annuitant, to continue the annuity payments until total payments equal to the purchase price have been made to the beneficiary named in the contract.

In the *cash refund annuity*, it is provided to pay immediately in cash to the executors of the annuitant the balance of the purchase money that has not already been returned in the form of annuity payments.

The above annuities are also termed as *annuities with Guaranteed Payments*. Naturally, these forms of annuity are more expensive than the ordinary life annuity as they carry with them additional benefits.

Survivorship Annuity

Under the terms of the *survivorship* or *reversionary annuity*, one life (called insurant or nominator) is insured in order to provide a life annuity for a second life (called beneficiary, annuitant or nominee). It provides that annuity payments shall commence only if the nominee be alive at the death of the nominator and then shall continue until the death of the nominee. If the nominee dies before the nominator, the policy terminates and all payments paid are forfeited to the company. Premiums may be payable either in one lump sum at the outset or periodically during the joint lifetime of the two lives. This form is particularly suitable to case of a husband wishing to provide a fixed income for his wife after his death.

Retirement Annuities

The retirement annuity is a special form of deferred annuity designed to enable the purchaser to provide a pension for himself during his old age. Under this plan, first the deferred period is fixed during which the annuitant pays periodical premiums which are accumulated with interest with the company. If the annuitant dies during this period or does not want to maintain the contract, the payment of a guaranteed cash surrender value is made. When the retirement age is reached, the annuitant has the option of selecting either the total cash value or an annuity. In the latter case, he may select one of the several types of annuities, such as regular life annuity, refund or cash refund annuity, or joint and survivor annuity. The retirement annuity is characterized particularly by a number of clauses permitting a wide range of flexibility.

Annuities involving more than one life

When the status over which the annuities are paid is the single life, it is called the *single life annuity*. The payment ceases with the death of the annuitant. However, policies may also be issued where the status over which the annuity payments are made is two or more lives. When, under a contract, it is provided that the annuity payments shall continue to be made during the lifetime of all the parties in whose interest the contract has been made and to continue in the same amount till the death of the last survivor of the group, it is called a *joint and survival life annuity* or the *last survivor annuity*. This form of annuity finds particular use when old couples wish to invest their life savings and provide that the annuity payments continue after the death of one for the benefit of the survivor during the remainder of his or her life.

When the contract provides for the annuity payments so far the lives are joint, it is called *joint-life annuity*. Here the payments cease at the first death.

Selecting a Plan

There are different types of policies carrying with them various rights and commitments. One has to select a type best suited to one's particular circumstances. In planning the selection of a particular policy, an individual, however, has to consider the following points:

and also to make a fair estimate of the likely change in it in the future. Of course there should be no over-estimate of the future income, otherwise the present sacrifice will be too great and the whole insurance may have to be allowed to lapse.

(iii) *Nature of his financial obligations and the financial capacity of his dependants.* These will determine the amount of assured sum and the manner in which it should be paid. An individual may need provision for the education of his child after ten years, in this case he would do better by taking a ten-year endowment policy where the assured sum may be payable in instalments; but if he wants to make provision for the marriage of his daughter, the payment of policy money in form of a lump sum will be more proper.

(iv) *Temperament.* If a person by force of his habit cannot save anything, it would be better for him to go for a policy of maximum amount as it will mean a compulsory saving for him, but if he is of regular habits and can follow a laid out plan he can take a policy of moderate figure and invest the rest of his savings to earn a higher interest.

Importance of Life Assurance

Life assurance helps to correct or prevent many situations of social and economic maladjustment. Judged from all its aspects, the value of life assurance cannot easily be overestimated. Mr. S. Bryan in one of his addresses said: "Insurance.....is the greatest blessing that modern times have bestowed upon mankind. It enables man to overlap the barrier of death; to overcome the grim fear that his loved ones may some day become dependants upon the charity of others; it enables him to project himself into the future and in a real sense, even if he dies, to live

again. The immortality that comes to a man who has insured his life for the protection of his widow and children is certain evidence of a mental and spiritual development that ought to make man rank high in the future world.

The institutions furnishing this great social service to the masses of the people are encouraging thrift, removing anxiety, destroying fear of the future, creating self-respect, and bringing about cooperation for social uplift that has never seen its precedent in any time in the history of the world."

Protection against immature death. The value of life assurance is very great to an individual. Every man of family, rich or poor, wishes his wife and children to be happy. He plans elaborately for them with respect to their education, marriage and general welfare but if he is snatched away before the expected time his dependants are compelled to put up with unthinkable hardships. But if he has taken a whole-life or family protection policy, there will be a considerable relief to the dependants. Thus life assurance is a good measure of protection against an early death.

Provision for old age. Life assurance also makes a good provision for old age. Many persons might be earning quite good an income during their youth and enjoying a high standard of living but with the coming of old age the earning capacity dwindles and they find it too difficult to maintain the same standard. An endowment assurance affords a comfortable support in old age and the money is available just when it is most urgently required. The assured can provide for the higher education of children, marriage of daughters, pilgrimage in retired life, etc., by this policy, at the same time providing for full protection against early death.

Promotes thrift. Life assurance is one of the most important agencies for the promotion of savings. It is commonplace that good resolutions are honoured more in breach than in observance. An individual

planning for regular voluntary savings will discover that either he fails to hold himself rigidly to the plan or in the times of slight financial stringency he consumes the entire savings. Life assurance fosters compulsory savings as the premiums assume the characteristic of a debt or an obligation to be met. If any premium is not paid on the due date, the policy may lapse and this fear makes the assured pay the premiums regularly.

Social value. Apart from the value of life assurance to individuals, its social value reflects in a benefit to the community at large. The dawn of industrial era with its backbone of money economy has created a large number of wage-earning labourers cut off from the old corporate family life and drifted to adopt strictly an individualistic mode of living. These labourers in their old age being unable to earn and having lacked the foresight to make adequate provision for old age become destitute or at least practically dependant. They become a social problem and no amount of security measures by state or private charities can prevent their malady. If they are induced to purchase life assurance according to their means, it will not only relieve society of a great problem but create self-reliant and economically independent civilians which is very important for a progressive nation.

Life assurance companies are interested in the longevity of their customers and to attain it, many of them educate their policyholders in the subjects of personal hygiene, sanitation, and disease prevention by means of issuing health bulletins, popular lectures, etc. Thus life assurance contributes to conservation of health.

The life assurance companies accumulate vast sums in form of premiums. This fund has been rightly called "a vast economic reservoir" which furnishes a good means of investment for the economic development of the country. Mr. Lloyd George once remarked that the success of Britain in the great war

was not a little due to the financial help received from the Insurance Companies.

Commercial Value. The use of life assurance in the field of business and commerce has very greatly increased in recent years. It serves as a basis of credit. When a life policy after remaining in force for a good time acquires a cash value, it can be furnished as a collateral security to acquire a ready loan in times of stringency. Again a creditor can take a policy on his debtor's life for the purpose of safeguarding a loan specially where the loan is advanced on personal security only, so that if the debtor dies before the repayment of debt the creditor can realise it from the insurance company. Further, in a partnership there may be two or more partners carrying on a business very successfully but when a partner dies, his share of capital is to be paid in cash to his dependants, and such a large amount of cash cannot be available from the working capital of the business without seriously dislocating the financial set up of the firm. A joint-life policy is the safest course under such circumstances. On the death of a partner, the money realised from the insurance company can be paid to his dependants without the slightest shock to the regular business. Similarly, the business can also provide for the payment of inheritance taxes on death by life assurance. In addition, big firms provide against the loss caused by the untimely demise of a valuable officer or employee by taking a policy on his life. The reason for this insurance is that the officer might be of extraordinary business ability and administrative capacity and his early death might seriously affect the profits of the firm.

CHAPTER V

PREMIUM COMPUTATION

Assessment Plan

The growth of the insurance idea to an institution of the size and importance of the life insurance business today is the result of a long period of evolution. In its early stages, it was a rough and unscientific method of provision against an early death. The members of a group would contribute to a fund which could be utilised in rendering assistance at the time of death to the surviving dependants of the deceased member of the group. In the beginning, the contributions were voluntary and the death benefits varied with the requirements for payments to the beneficiaries. Later on the benefit to be paid was definitely fixed and the contributions, later termed as assessments, were varied in accordance with the needs of the organisation. This plan was called the "assessment" assurance.

The assessment plan in the beginning provided that whenever any member died, equal assessments were collected from the remaining members of the group and the total was paid to the beneficiary. The defect of this plan was, that firstly the members could not know as to how many assessments were payable during the year as their number depended on the number of deaths, and, secondly the same assessments were collected from all members without any reference to age. Thus it was an inequitable plan. Later on, to overcome the inequities growing out of age differentials, some incorrect rules were adopted, whereby the assessments were graded according to age on joining the group. However, it still remained unscientific.

Natural Premium Plan

Both the defects of assessmentism are removed by this plan. Here the premium to be paid during

the year is fixed in advance and is charged at the commencement of the year, secondly the premium is graded according to the age at entry, so that different persons of different ages have to pay different premiums. A man of 20 will pay less premium than the man of 40 because his chances of death are comparatively remote. This calculation of premiums in advance and linking it to the age is made possible by the help of mortality tables (discussed below in detail). In these tables is recorded the experience of past as to how many persons die out of a particular group at a particular age in a year and it is expected that this experience will repeat in future. Thus, suppose 100 persons of the same age want to take insurance for Rs. 100 each for one year and it is found from the mortality table that seven persons will die out of them during the first year, it can be calculated that Rs. 700 will be required to pay the claims. This amount can be divided among 100 persons and the premium per head is Rs. 7. Of course the premium for the same amount of insurance at higher age will be higher as the mortality rate then is higher. As the man advances in age, his chances of death increase and with that, the premium also increases. The increase as between one age and the next is at first very small but accelerates with advancing age. Therefore, the defect of this system is that premium in old age will be so high as to be prohibitive. Again if the assured knows himself to be in poor health, he will make every effort to keep insurance in force. On the other hand, others in good health may not be willing to pay increasing costs and drop their insurance. Thus, it will develop in a preponderance of impaired risks with resulting increased mortality costs and possible insolvency to the company. As the premiums under this plan are directly based on the mortality rate, it is called 'Natural Premium' Plan. The premiums increase year after year with the increase in mortality rate and so it is also called 'yearly-renewable-term' plan. How-

ever, on account of the above objections, it is not popular except for a limited period.

Level-Premium Plan

The above defect of increasing premiums at higher ages is removed by the Level-Premium Plan. Here the premiums to be paid are levelled up so that usually the same premium is paid every year. The premiums in the earlier years are greater than the actual cost (represented by Natural Premium Plan) and in the later years they are less—with the result that excess payments of premiums in the earlier years are accumulated in a reserve which makes up any deficiency arising out of lower premiums in the later years. This reserve, however, remains with the company and is invested by it to earn compound interest. The principles of investment of this fund will be discussed in the next chapter. Most of the companies follow this method of premium computation.

Requirements of Premium Computation

Now when the insurance business is carried on most competitive lines by the experts, the computation of premium is based on very scientific principles. Premium is the price of the protection sought for and unlike assessment, it should be fixed in advance and be most equitable. The insurance companies accumulate the premiums from different policyholders, invest these premiums to earn interest and pay the claims out of them whenever they arise. Thus to a company there are two sources of income—one being the premium itself and the other, the interest earned on it. Similarly, its payments will be in the form of claims and to this will be added the expenses of management. Thus if the premiums received plus interest earned on them exceed the claims plus the expenses paid, the excess will be the profit of the company. Due to keen competition the profit is reduced to the minimum and, therefore, the company has to make

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as accurate an estimate of premiums as possible which in turn depends upon the remaining three items, viz., future claims, interest and expenses. Out of these three, the latter two are not so difficult to compute as the first one. The claims can be calculated with the help of mortality tables.

Mortality Tables

Suppose a person approaches an insurance company to take a term assurance policy for one year the company has to quote the premium. Now if the company can know in advance that this person will die during the year, it can fix the premium somewhere near the assured sum after making adjustments for interest, expenses and profits and when the person dies, the sum will be paid to his successor. On the other hand, if the company can know that this person will not die during the year, it may fix a nominal amount as premium. It is commonplace that such predictions are never possible. But suppose if 1,000 persons of the same age and health approach the insurance company each asking for a term insurance of one year for an assured sum of Rs. 1,000, the company on the basis of past experience can make a fairly accurate estimate as to how many persons will die during the year and suppose its estimate about the deaths comes to 8, it will have to pay Rs. 8,000 as claims. This sum is to be realised from the 1,000 persons and the premium from each person will be Rs. 8 per year (leaving aside the adjustment of interest, expenses, etc., for the present). Of course, if the estimate about deaths is an under-estimate, the company shall have to pay the balance from its own funds; on the other hand, if it is an overestimate the excess will be its profits. Such predictions are possible on the basis of past experience which is recorded by the experts on most scientific lines. These records are available in form of a mortality table which can be defined as *an instrument to measure the probability*

of living, or of dying. The whole theory of life insurance has its basis on the mortality tables. They show the past experience of deaths and it is assumed for computation of premiums that it will be repeated in future. This assumption need not necessarily be realised cent per cent correct. All that is necessary is that mortality rates used for computing premiums be safe and this turns out to be so because the death-rates when applied to very large numbers do not show a sudden change and remain fairly stable.

Construction of Mortality Tables

A Mortality Table starts with the lowest age at which insurance is granted and might go upto the highest probable age say 90 or 100. The American Experience Table of Mortality is given below:

1 Age	2 Number living	3 Deaths each year	4 Death rate per 1,000
10	1,00,000	749	7.49
11	99,251	746	7.52
12	98,505	743	7.54
13	97,762	740	7.57
14	97,022	737	7.60
15	96,285	735	7.63
16	95,550	732	7.66
17	94,818	729	7.69
18	94,089	727	7.73
19	93,362	725	7.76
20	92,637	723	7.80
21	91,914	722	7.85
22	91,192	721	7.91
23	90,471	720	7.96
24	89,751	719	8.01
25	89,032	718	8.06
26	88,314	718	8.13
27	87,596	718	8.20
28	86,878	718	8.26
29	86,160	719	8.34
30	85,441	720	8.43

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1 Age	2 Number living	3 Deaths each year	4 Death rate per 1,000
31	84,721	721	8.51
32	84,000	723	8.61
33	83,277	726	8.72
34	82,551	729	8.83
35	81,822	732	8.95
36	81,090	737	9.09
37	80,353	742	9.23
38	79,611	749	9.41
39	78,862	756	9.59
40	78,106	765	9.79
41	77,341	774	10.01
42	76,567	785	10.25
43	75,782	797	10.52
44	74,985	812	10.83
45	74,173	828	11.16
46	73,345	848	11.56
47	72,497	870	12.00
48	71,627	896	12.51
49	70,731	927	13.11
50	69,804	962	13.78
51	68,842	1,001	14.54
52	67,841	1,044	15.39
53	66,797	1,091	16.33
54	65,706	1,143	17.40
55	64,563	1,199	18.57
56	63,364	1,260	19.88
57	62,104	1,325	21.33
58	60,779	1,394	22.94
59	59,385	1,468	24.72
60	57,917	1,546	26.69
61	56,371	1,628	28.88
62	54,743	1,713	31.29
63	53,030	1,800	33.94
64	51,230	1,889	36.87
65	49,341	1,980	40.13
66	47,361	2,070	43.71
67	45,291	2,158	47.65
68	43,133	2,243	52.00

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1 Age	2 Number living	3 Deaths each year	4 Death rate per 1,000
69	40,890	2,321	56.76
70	38,569	2,391	61.99
71	36,178	2,448	67.66
72	33,730	2,487	73.73
73	31,243	2,505	80.18
74	28,738	2,501	87.03
75	26,237	2,476	94.37
76	23,761	2,431	102.31
77	21,330	2,369	111.06
78	18,961	2,291	120.83
79	16,670	2,196	131.73
80	14,474	2,091	144.47
81	12,383	1,964	158.60
82	10,419	1,816	174.30
83	8,603	1,648	191.56
84	6,955	1,470	211.36
85	5,485	1,292	235.55
86	4,193	1,114	265.68
87	3,079	933	303.02
88	2,146	744	346.69
89	1,402	555	395.86
90	847	385	454.54
91	462	246	532.47
92	216	137	634.26
93	79	58	734.18
94	21	18	857.14
95	3	3	1000.00
96	0		

The first column in the table shows the age at which the insurance is taken. The second column shows the number of persons living at that age. In the next column are recorded the number of persons dying during that year. They represent the number of persons at risk during the year. The last column of 'deaths per 1,000' shows the mortality rate which is arrived at by dividing the deaths during the year by the number of persons alive in the beginning of

that year and then multiplying the result by 1,000. The mortality rate is generally expressed as per 1,000, though it can be expressed in terms of other numbers as well, such as per hundred. It will be observed that the mortality rate goes on increasing year after year first with a slow speed but with the approach of old age the speed is accelerated.

The mortality tables can be prepared from the census records or from the experience of assured lives of one or more companies. In case they are prepared from census records the mortality rates will be higher than those in a table based on the experience of an insurance company, because the assured persons in a company are medically selected and, therefore, possess a better health than the general population which includes many persons in bad health, engaged in dangerous and unhealthy occupations, etc.

A mortality table can also be prepared from the experience of a single company but the results will not be very reliable in such a case owing to its restricted field. On the other hand, if the mortality table is based on the experience of many companies gathered over a large number of years, the results will be fairly accurate as the experience of many companies based on very large number of assured lives coming from different localities will give a good chance to the Law of Averages to work. Such a table is called a Standard Mortality Table.

Different Types of Mortality Tables

The mortality tables are of three types, viz., General, Select and Ultimate. A Mortality Table constructed from the experience of assured lives, without any regard to the duration of assurance is termed a General Table. The tables constructed are usually of this type. Here the mortality rate is calculated on the basis of deaths during one year on the total number of lives at risk at the commencement at a particular age. Similarly, in the next year on

the basis of the survivors from the last year plus the new entrants of similar ages (total of both will make the 'number of lives at risk') and the deaths out of this total, will be calculated the mortality rate. Thus here the 'lives at risk' are composed of old lives as well as new entrants and hence this table is also called 'Mixed' or 'Aggregate' Table.

Experience shows that the mortality rate among the persons of the same age is not always the same. The late Dr. T. B. Sprague proved that the death rate among persons of same age varies according to the duration of assurance. At a particular age, a group of persons assured, let us say, ten years back must have a higher mortality rate than the other group of persons assured two years back at the same age because the persons of the former group were medically examined ten years back and might have contracted some disease by now but the persons of the later group are medically examined only two years back and so have less chances of having contracted a disease. The later group is under the effect of selection which remains for nearly five years. The table based on this fact of selection is called a 'Select Mortality Table' which shows the rate of mortality not only by age but by 'duration of insurance' as well i.e. the time since selection. A select mortality table thus avoids the intermixture of rates of mortality associated with different ages at entry and durations of assurance, and which from the outset segregates the specific mortality of the entrants at each separate age. A separate table of experience is constructed at each age at entry. Select tables, accordingly, include detailed cognisance, in respect of each age at entry, of the diminished mortality during each of the years over which the benefit of selection appreciably operates and then merge the final ratio of the term of 5 years after which the selective advantage becomes virtually extinct. The result of this step is that the probability of death occurring in a year re-

garding the new entrants is less in Select Table than in the Mixed Table, because in the latter, the chance of death is increased by the inclusion of lives with diminished prospects of longevity, who entered at prior ages, and from whom to a large extent, on the whole, the effect of selection has disappeared. The effect of this on the premiums will be that they are lower when computed according to Select Table, specially at an advanced age.

The effect of selection on the mortality rate, as stated above, 'wears off' in about 5 years and all the lives of the same age show the same mortality rate, which is called the ultimate mortality rate and the table showing this rate is termed as the Ultimate Mortality Table.* Though premium rates according to select tables are more accurate, it is customary to use ultimate tables due to their simplicity. The American Experience Table of Mortality given in this chapter is an ultimate table. In India, many of the companies have adopted the mortality tables of foreign companies, the only company which has prepared a mortality table based on the experience of Indian lives being the Oriental Company. The table is called the Oriental Mortality Table.

Interest

As stated above, the second factor for the computation of premium is the interest rate. The company can calculate the amount of claims to be paid in different years but it cannot charge the same amount for premium as it will receive the compound interest on those premiums until the policies mature and so to the extent of the amount of possible interest on the premiums the reduction should be made. This is achieved as under: The company knows the rate of interest which it expects to realise on the premiums and by applying this rate to the tables of interest, which show the present value of Re. 1 accord-

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ing to different years at compound rates, it can calculate the present worth of these claims.

The two elements, the rate of mortality and the rate of interest, determine the amount of *net premium* (also called *pure premium* or *cost price premium*). The higher the rate of interest assumed, the lower will be the amount of net premium. Following table shows the present values at different interest rates of Re. 1 due at the end of different periods:

Years	3%	4%	5%
1	.971	.962	.952
2	.943	.924	.907
3	.915	.889	.864
4	.888	.855	.823
5	.863	.822	.784
6	.837	.790	.746
7	.813	.760	.710

Let us suppose that we want to calculate single net premium for an endowment assurance of Rs. 1,000 on a life aged 40, payable at the end of five years or at previous death. The rate of interest is assumed at 3 per cent. Having recourse to mortality table (page 59) and the above interest table, the calculation will assume the following form:—

Out of 78,106 lives assured for Rs. 1,000 each, effected at age 40

	Amount Payable Rs.	Present value of Re. 1	Product Rs.
1st year ..	7,65,000	.971	7,42,815
2nd year ..	7,74,000	.943	7,29,882
3rd year ..	7,85,000	.915	7,18,275
4th year ..	7,97,000	.888	7,07,736
5th year ..	8,12,000	.863	7,00,756
At the end of			Rs.
5th year ..	7,41,73,000	.863	6,40,11,299
Total Present value			6,76,10,763

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At the end of			Rs.
5th year ..	7,41,73,000	.863	6,40,11,299
Total Present value			6,76,10,763

By dividing the total present value by the number of assurances 78,106, we find that the single premium required for each assured is Rs. 6,76,10,763 ÷ 78,106 = Rs. 865 annas 10 pies .6.

Similarly, the premium can be calculated on any plan but the procedure involves much of calculation work and it is the task of actuaries who are experts in the line. They prepare the premium tables based on different mortality and interest rates and the insurance companies utilise them for their purpose.

Expenses

The above two factors determine the net premiums which will be just sufficient to pay the claims if they arise as contemplated by mortality tables and if the interest earned is same as assumed. In addition to the pure claims, the company's disbursements also take place in connection with certain expenses of management. The amount of money necessary to meet expenses of carrying on the business cannot be definitely determined but is estimated on the basis of experience. This amount is added to the net premium and is known as *loading*. The net premium plus the loading is the *gross premium* or *office premium* and it is this premium which is charged of the policyholders.

Aside from providing for the cost of carrying on business, the loading also undertakes to provide funds to meet contingencies unforeseen in the calculations. Part of the loading, therefore, is designed to absorb losses if the assumptions as to mortality and interest turn out to be underestimates. Thus, loading is required to provide for expenses of operation and for contingencies. For the purpose of fixing loading, the expenses of a life office are divided into two parts: (i) those which vary with the amount of the premium, and (ii) those which to a substantial degree, remain constant. The chief items in the former type are commissions to agents and taxes which represent a per-

centage of premiums. These expenses can be provided for by adding a certain percentage to premiums. To the second category belong the expenses of medical examination, of keeping the policy records, general administrative expenses of office, etc. These expenses have no relationship with the premium rate or insured amount and are the same for every policyholder. This constant loading is arrived at generally as a fixed amount per Rs. 1,000 insurance. Thus the total loading is a percentage of the premium plus a constant amount per Rs. 1,000. The percentage and the constant need not be the same for all types of policies. In case of participating policies, the loading is still greater.

CHAPTER VI

THE RESERVE

How does it arise ?

As explained in the last chapter, the regular premiums charged according to level-premium plan are greater than the actual cost of insurance during the early policy years. The excess payment involved in this is reserved for use in meeting mortality costs in the later policy years when the premiums are insufficient for the purpose. This excess amount accumulates in a fund and is called "Life Fund", "Reserve", "Net Premium Reserve", or "Reserve for Reinsurance." It is this feature of the level premium plan which introduces the element of investment in life policies. When a policy becomes a claim, the reserve makes up part of the policy amount. It is thus clear that level premium plan is really not pure insurance but rather a combination of a decreasing insurance with an increasing investment.

The actual 'risk' or 'insurance' goes on decreasing year after year in the level-premium plan. The

reserve which is paid by the policyholders in excess of the actual cost is the liability of the company and is held by it in the nature of a trust to meet the claims of policyholders. The ability of the company to meet all claims as they mature, depends upon the adequacy of this reserve. It should never be regarded as an extra fund to meet contingencies or a profit above mortality experience. On the contrary, on the basis of the calculated experience the mortality costs will ultimately consume the entire reserve. It represents the premium received but unearned. This reserve must earn the interest assumed in the calculation of premium to be sufficient to meet all future claims.

The fund relating to an individual policy goes on increasing year after year. At the commencement of the policy, the fund is almost non-existing as the first year's premium is generally spent up in medical examination, procuration commission, etc., while it becomes equal to the insured amount at the time of the maturity of a policy. The actual rate at which the fund increases varies according to the type of policy.

Valuation

The process of computing the reserve is termed "valuation." Of course, the other purposes of valuation are the comparison of actual results of mortality experienced, interest earned and expenses incurred with those assumed in the premium table and the determination of any surplus available for distribution as profits. The task of valuation is a complicated one and involves much energy and time, and, therefore, it is made once in three or five years. It is a sort of stock-taking common to all business enterprises. There are two important methods of making valuation.

The liability of an insurance company is to pay claims in future. It will also receive income in form of future premiums, but as seen above the future pre-

miums in level premium plan are less than the actual cost and to make up the deficiency it has received higher premiums in earlier years of the policy. Therefore, the present value of all future claims and the present value of all future premiums are first calculated and the difference between the two indicates the "Net Liability" of the company. The reserve must be equal to this net liability if the company is to maintain its financial position. This method of valuation by looking forward is called the *prospective method*.

The valuation may also be made by looking backward over the results of the past. According to this method, first the premiums received in past together with interest earned on them are calculated and then the amount of total death claims paid is ascertained. The excess of the former over the latter will represent the reserve. This method is known as the *retrospective method*. So long as the same bases of mortality and interest are used as were assumed in fixing the net premium, the result is identical whichever method is followed. However, since actual experience rarely conforms exactly to the assumptions as to mortality and interest made in fixing premiums, the prospective method is more logical to use in trying to understand the nature of these reserves.

Investment of Fund

As said above, the 'fund' or 'reserve' is the liability of the company towards the policyholders and the company invests it to earn the assumed interest. Great care has to be taken in selecting suitable channels of investment and supervising them. Life insurance companies keep organized departments to handle the tremendous volume of business occasioned by the investment of reserve funds. Experts are constantly scrutinizing the market outlet for funds, and, through an analysis of economic and financial conditions, are able to forecast investment trends.

However, the life insurance company officers must observe complete good faith and should formulate an investment plan in conformity with the following canons of investment.

Safety. The investment should comprise the permanent integrity of the capital so as to avoid the violent and frequent fluctuations in the value of securities. The reserve represents the company's liability towards its policyholders and, therefore, the securities in which it may be invested should never at any time fall in their face value, otherwise the liability will be more than its corresponding asset and this will bring a ruin to thousands of policyholders. The primary purpose of investment of the fund is not to earn profits as in the other business concerns but to maintain complete security. Due to this reason, speculative investments which involve possibilities of either large profits or large losses are not suitable for life insurance funds. The insurance company, like other business concerns, is not expected to make huge profits for its policyholders but to work as a trustee for their funds and on account of this status of trusteeship it should invest the funds only in sound channels. Security of principal is by far the most important consideration and all other considerations should be subordinated to this.

In order to preserve the interests of policyholders, the Governments of almost all the countries have imposed restrictions on the investment of life funds. According to these restrictions, the funds cannot be invested in any other securities except in the specified ones. In India, too, the Insurance Act 1938 lays down that fifty-five per cent of the policy liabilities should be invested in Government or approved securities. The object of such state regulation is to safeguard the capital and to ensure that the control of the funds does not pass into the hands of undesirable individuals or combines who might divert them to their own ends. However, this restriction has been

much criticised in the business circle where it is felt that the restriction is too harsh and tends to cripple the interest yielding capacity of the companies.

Yield. When premiums are calculated, a certain rate of interest is assumed. In order to be able to meet its claims when they arise, an insurance company must realise at least this interest rate. If the company earns a higher interest rate, the excess will be its profits, and, if a lower interest is realised, the deficit will represent loss. In order to avoid the latter eventuality, the companies assume a conservative rate, usually 3% or $2\frac{1}{2}\%$. But it does not mean that they should be satisfied with earning this interest only and not try to get higher rate. As a matter of fact, the investment should be made in such securities which yield the highest remunerative return consistent with the principle of safety. By earning an interest higher than what is assumed in premium computations, the company can reduce its future premium rates and thus attract more custom. Due to competition, the aim of a life office is always to offer its policyholders the cheapest insurance.

It will be seen that the two principles are opposite in nature. If safety is the aim, the yield will be low; if yield is high, the safety will be least. The investment officer has to strike a happy media between the two and secure the highest yield consistent with maximum safety. Due to the peculiar nature of life business, the investment can be made in long-term securities and in this field the best classes of securities are obtainable which will satisfy both the principles. It can be achieved by investing a very large portion of funds in completely safe securities which might yield the assumed rate of interest and the remaining small proportion may be invested in speculative securities with high yield. In addition, an investment fluctuation fund may also be created to meet any possible losses on account of speculative investments.

Diversification. The consistency of maximum security with high yield can best be achieved by distributing investments both *geographically* and among different *classes* of securities. "Do not have all eggs in one basket" should be the guiding principle both in the private and public choice of investments. The total fund should not be invested either in one class of securities or in the securities of same industrial character or in the securities of one locality or section of the country. The diversification offers an opportunity for the wider spreading of risks and the law of average by its action will reduce the losses on account of fluctuations in value of investments to the minimum. If the stock exchange securities fall in their value, the well-secured mortgages are bound to appreciate. Similarly, the prosperity of various industries does not rise or fall in unison. At times the political upheavals also affect the investments of a country. Therefore, if the investments are distributed in a judicious apportionment, the loss arising out of any financial disturbance in one set (class, industry or location) will be neutralized by an appreciation in other classes of investments and the equilibrium will be restored. To achieve this object, many life offices maintain an expert investment staff which keeps upto date lists of investments classified according to class, industry and location and the investment is made after due consideration.

Liquidity. The funds should be invested in such a way that they may be readily convertible whenever claims are payable. In a commercial bank this principle is of paramount importance and the sole criterion of its soundness is to pay deposits on demand, and, therefore, its funds cannot be locked in long-term securities. The case of a life office is, however, different where there can be no such sudden demand for withdrawals as all persons cannot die or attain a particular age at once. The disbursements

of a life insurance company are usually in the form of claims, surrender values, policy loans and regular expenses. A rough estimate can be made of these payments either on the basis of mortality rates (for claims) or on the basis of past experience. But it is not necessary to keep the funds to the tune of these payments in liquid form as there is a vast flow of new cash daily in the form of premium income combined with the flow of new money. To ensure the proper degree of liquidity, investments are so made that the maturities will occur at intervals adjusted to meet the needs of maturing obligations. As a provision against sudden demand for surrender values or policy loans, many companies in foreign countries insert a provision in their policies reserving to them the right to delay these payments for a specified period. Finally, the companies may keep some cash also as the last line of defence.

The investment should as far as possible aid the life business, so that a possible two-fold profit may be realized—a higher interest rate and more business. If the investments are made in well-secured mortgages, the interest rate will be high and in addition a sinking fund policy or endowment assurance may be effected and included in the security to repay the advance at the end of a specified period. Again if the life funds are utilised to finance the schemes of colonisation, town extensions and proper housing, it will go a great way to lower the mortality rates. The insurance companies may demand that their compulsory investments in government securities should be employed in health promoting projects. However, the principle should not be pushed too far.

CHAPTER VII

SURPLUS AND ITS DISTRIBUTION.

Surplus

The object of the periodical valuation of a life insurance company is to find out its financial position. As previously stated, the excess of present value of future claims over the present value of future premiums represents the "net liability" of the company. For the company's soundness, the reserve should at least be equal to this 'net liability.' If the reserve exceeds the amount of net liability, the excess will represent the 'gross surplus', and if it is less than the 'net liability', the difference is known as the 'deficit.' The first charge over the 'gross surplus' is the provision to meet unusual contingencies and fluctuations and for this purpose, part of the gross surplus is transferred to 'contingency reserve.'

The balance remaining after the above named provision is called the 'net surplus' or profit and is available for distribution. If the company is a mutual company, the whole of the profits are distributed among the policyholders; but, if the company is a stock company, the stockholders will get the whole of profits. These days most of the companies are mixed companies and as high as 90 per cent. of the profits are distributed among the participating policyholders. The profit allotted to shareholders is called 'dividend' and that given to policyholders is named 'bonus.' It is a misnomer to call bonus as dividend because dividend represents the usual profits of a firm in its ordinary course of business, but the bonus represents the return to the policyholders of the excess premiums charged on account of their overestimate.

Sources of the surplus

The following are the sources of the surplus of a life assurance company:—

(1) *Mortality Savings.* The premium charged is computed upon the assumption that deaths that occur each year will equal the number shown in the mortality table used as a base; but in actual practice, the mortality rate experienced is lower than the assumed one on account of medical selection and the general trend towards lower mortality rate and as a natural consequence of this, the reserves are held longer, and earn interest for period longer than anticipated and due to the shifting of mortality to older age more premiums are collected. This is known as a saving or a gain from favourable mortality rate.

(2) *Interest.* In the computation of premiums a certain interest rate, generally 3 per cent, is assumed but the interests earned on the investments are much higher than this rate and this excess accumulated at a compound rate becomes one of the most important sources of surplus. In India, the insurance companies have recently shown great anxiety owing to the cheap money policy followed by the Government and the interest earnings have considerably fallen. In order to make up this deficiency, almost all the companies have revised their premium rates to a higher scale.

(3) *Loading.* Loading is designed to provide primarily for the expenses of carrying on the business. As the business increases, the proportionate expenses decrease owing to a more efficient operation. Life insurance companies are constantly striving towards this end and try to keep their expense ratio to the minimum so much so that it remains very much lower than the expenses assumed in pre-

mium calculations and thus the resulting saving becomes a part of the surplus.

(4) *Lapse and Surrender.* When an insured, owing to adverse financial circumstances, is unable to continue the premium payments in the early years of his policy, all the premiums paid are forfeited to the company and the policy lapses. Thus the whole of reserve accumulated on such policies is a distinct gain to the company. Per chance if a policy has remained in force for a long time, generally a surrender value is paid to the assured on the cessation of premium payments but the value is always less than the accumulated reserve and the difference accrues to the company as a profit. Because of the liberal terms upon which life insurance policies are written today, profits from this source are not as important as they were in former years.

(5) *Bonus Loading.* In case of participating policies, the premium rates are higher than those for the non-participating policies and this excess of premium on account of the right to share in the profits of the company is called the bonus loading. Of course, the participating policyholders get not only this excess back in form of bonus but also receive the part of surplus arising on account of the above sources. Further, the surplus arising from the various sources on the policies of non-participating policyholders also goes to the participating policyholders, as the former have no right to get the surplus back.

(6) *Disability Premiums.* Sometimes policies are also issued to cover the permanent disability of the assured before the age of 60, and the premiums are waived after the disability takes place. In such policies, the premium rate is higher for the additional benefits. The extra premium charged on such policies is a source of surplus to the company as the cost of claims arising out of

the disabilities is always lower than what is assumed in premium calculations.

In addition to the above possible sources of surplus, the savings may also accrue on account of the appreciation in the value of securities and from the annuity business. However, the first three items remain the most important sources of surplus.

Bonus Systems

When the actual profit available for distribution has been ascertained, it will be apportioned among the participating policyholders. The distribution of surplus among the policyholders can be on an annual basis but usually it is made at intervals of 3 or 5 years. The bonus is generally expressed as percentage of the assured sum or so many rupees on the assured sum of Rs. 1,000. The determination of the shares of individual policies in the divisible surplus is a complex matter and the apportionment, if it is to be equitable, cannot be made by rule of thumb. Various schemes have been tried from time to time with this object in view, some being cumbrous and leading to very complicated calculations, others being relatively simple to apply. A brief description of the important schemes of allotting bonuses is given below.

Reversionary Bonus

According to this system, the bonus declared as a percentage of the sum assured for each year of the valuation period is added to the assured sum and becomes payable only on the maturity of the policy. The assured has no option to withdraw it in cash before the assured sum itself becomes payable. If at each valuation the percentage of bonus is calculated on the original assured sum, it is called simple *reversionary bonus*. Most of the Indian insurance companies adopt this system.

On the other hand, if the bonus is declared as the percentage of the total amount payable at maturity, it is called *compound reversionary bonus*. Here the bonus is calculated on the original assured sum plus all the bonus allotments attached so far to it.

Cash Bonus

Under this plan, the bonus when declared is paid to the assured in cash and the original assured sum alone is payable on maturity of the policy. Here the assured gets a regular income in cash by way of bonus. Usually the cash bonus carries an option of either being converted into reversionary bonus or being applied in reduction of future premiums.

Uniform and Contributory Bonus

When the reversionary bonus is declared as a percentage of the sum assured (whether as a simple or compound reversionary bonus) irrespective of the rate of premium payable or the duration of the policy, it is called *uniform reversionary bonus*. The bonus rate is uniform on policies of all ages and all durations. This system due to its simplicity has the advantage of being easily understood by the public. It is the most common form of bonus with the English offices.

However, on theoretical grounds the above system can be proved inequitable as it does not take into consideration the contribution of individual policies towards the surplus. The contributory system removes this defect. According to it, the total amount of divisible surplus is divided into parts according to the *sources* from which it has arisen and then it is distributed among different classes of policies in proportion to their contribution. Here the participation in the surplus is limited to policyholders who create it and all others are excluded. The bonus will, there-

fore, depend on the plan of insurance, age at issue and duration of policy. Usually the three principal sources, viz., mortality, interest and loading are taken into account in determining their contribution to the surplus, and, therefore, this plan is called *three-factor contribution system*. The contribution on account of other sources is considered to be negligible and hence is not accounted for. The plan introduces great refinements and has the merit of being more equitable. In spite of being very cumbersome, the contribution plan is followed by practically all the American companies.

Reduction of Premium Bonus

When the bonus is not added to the assured sum but is utilised for a permanent reduction in the future premiums payable, it is called *Reduction of Premium Bonus*. As soon as the future premiums have been extinguished by this bonus, the further bonuses are converted into Reversionary Bonuses by way of additions to the sum assured. It will be noticed that if a policy has remained in force for a very long time and the event of its maturity is not very far, the reduction in premium will be much larger than in the case of a comparatively new policy because the same amount of bonus will result in a larger reduction when spread over a few premiums than in case of a very large number of premiums.

Discounted Bonus

The companies which have been regularly declaring bonus in past years sometimes offer participating policies on discounted bonus plan. They anticipate a particular bonus rate and on that basis reduce the premiums at the very outset. Thus the policyholder gets the advantage of bonus from the very beginning of the contract in form of reduced premiums. However, if the actual bonus rate hap-

pens to be higher than the anticipated one, the difference is added to the assured sum or paid in cash; but, on the other hand, if the anticipated bonus is not realised, either the assured sum is reduced or the premiums are increased by the amount necessary to make up the deficiency.

Deferred Bonus .

Under this plan, though the bonus is declared periodically it does not attach to the policy so far the stipulated condition is not fulfilled. The condition may be either the lapse of a fixed number of years or the accumulation of premiums with a high interest rate equal to the assured sum. Thus the vesting of bonus is deferred to a future date. The declared bonus remains a contingent charge so far the condition is not fulfilled and it is only after the fulfilment of this condition that it becomes a liability. If the assured happens to die before the fulfilment of the condition, simply the assured sum becomes payable and the deferred bonus is forfeited to the company. The premiums under this plan are very low in comparison to those charged from the ordinary participating policyholders.

Interim Bonus

When a claim arises between two valuations, the bonus paid for the period between the last valuation and the maturity date is called the *interim bonus* or *post mortem bonus*. Usually, the rate of this bonus is announced at a valuation date and it applies to claims arising before the next valuation. The rate of interim bonus may be the same as the rate declared for the last valuation period just completed or slightly less.

CHAPTER VIII

SELECTION AND RETENTION

Proposal for Assurance

Any person desirous of taking an assurance has to apply to the insurance company or approach its agent who will supply a Proposal Form free of charge. This form contains a set of questions regarding the applicant's age, occupation, diseases from which he suffered in past, ages of his father, mother, brothers and sisters, diseases from which they suffered or died, etc. The answers to all these questions will help the insurance company to assess the degree of risk involved. The Proposal Form is a very important document and forms the basis of the contract and, therefore, the applicant should be very careful in answering the questions. Any concealment or inaccurate statement would vitiate the contract. The applicant has also to mention the name and address of a friend who best knows his health and habits and who is not a relative or employee of the applicant. This is required for the purpose of further enquiries which the insurance company may make in future. Some companies require this friend to give a report about the applicant's habits to the insurance company. Usually, the form of report is supplied by the company and the friend after filling in the answers to all the questions has to send it to the insurance company. The specimen of the proposal Form¹ and the Private Friend's Report² are given at the end of this part.

Medical Examination

When the completed proposal form is received in the company's office, it will be carefully scrutinised there. If, on the face of it, there appears to be no

1 Appendix A

2 Appendix C

objection to the case, the company will ask its medical doctor to examine the applicant. The proposer has not to pay the doctor's fees. Generally, the insurance companies have printed forms¹ of medical report and the doctor will examine the proposer in light of the information required therein. Usually the information relates to height, weight, lungs, heart, chest, abdomen and other physical peculiarities of the applicant. The doctor also puts questions to the proposer regarding his family history and the diseases from which he suffered. The answers to all these questions should be correctly answered. In India, however, the medical examination is simply a farce in many cases and this leads to the inclusion of unhealthy lives and consequently the increased mortality reflects in higher premiums for all.

Reason for selection

The computation of premium, as explained previously, is based upon the mortality experience of healthy male lives and, therefore, all the different premium tables apply to such applicants only. Due to this, the proposer should not only be fit medically but also be a normal life for the purposes of insurance. The abnormality may arise on account of his occupation, residence, personal habits, etc., which may increase the risk. Therefore, the company has to make selection so as to build up a homogeneous group that may be insured on a basis that experience indicates to be safe.

Applications for life assurance may fall into one of the three groups: (i) standard lives, (ii) sub-standard lives, and (iii) uninsurable lives. The first two types of lives are insurable lives—the former being insured at normal rates and the latter at enhanced rates. The problem of selection relates to the first group of lives. The selection is done after receiving the proposal form and medical report in light of the information con-

tained therein. The medical doctor, after examining the applicant, will put him in any one of the above three categories. Even if the applicant is put in the group of standard lives the company will make a selection on the basis of residence, occupation, etc.

Hazards of Residence

If the applicant happens to live in an unhealthy part of the country or the world, he cannot be regarded as a standard life because of the higher mortality. The companies generally refuse to grant assurance to those applicants who live or contemplate living in the tropics. Residence in tropics makes a risk sub-standard on account of the unhealthy conditions there and the difficulties to secure the services of a satisfactory medical examiner. Many parts are favourable to the development of malaria, tuberculosis and the other diseases. In some areas, there is an earthquake hazard.

The companies, therefore, regard such lives as sub-standard and charge extra premium on account of the extra hazard. If an assured has already taken a policy living in healthy part but later on proceeds to unhealthy regions, he has to inform the company about this and he may be charged an extra premium so far he remains there.

However, now-a-days the practice has grown to issue policies without any restrictions as to residence and the assured can proceed to any part of the world in peace times. Such policies are called 'world wide policies.' The Indian companies allow a rebate in premium to the policyholders if they proceed to Europe, America or Japan north of 33° North Latitude. The rebate is allowed for the period of residence in these parts as they are regarded conducive to good health.

Hazards of Occupation

The applicant may be medically fit but on account of being engaged in a hazardous occupation, he may

be a substandard life. Many occupations are regarded as hazardous either because they involve risks of accident or due to their being conducive to degenerative diseases. These hazardous occupations result in higher mortality of the persons employed in them and hence insurance cannot be granted to them on normal premium rates. The workers in poisonous metals, such as lead and radium, are susceptible to tuberculosis. Such persons may be either refused insurance or accepted at enhanced premium rate on a substandard basis. The following occupations are some of the hazardous occupations: Naval, military, marine, aviation and employment in ammunition factories, underground work in collieries, electricity, fire brigade, etc.

Naval and Military Service

The persons engaged in these services are divided into two classes, viz., combatants and non-combatants. A non-combatant is granted assurance at usual rates but whenever he proceeds on active military service (but not for actual fighting) he has to intimate to the company which may levy an extra charge. If he is to participate in actual fighting and dies on account of this, the company will pay the surrender value only and not the full assured sum.

The policies are also issued on the lives of combatants in naval and military services subject to the condition that in the event of death of the assured arising directly or indirectly from any war, the amount payable under the policy will be limited to a sum of total premiums paid or the surrender value whichever is greater but not in any case exceeding the assured sum.

War Risks

The policies which are issued in peace times, usually include war risks and no extra premium is charged for this. If subsequently the war breaks out,

the assured remains covered under the existing policy. But during war times, the new applicants are not granted the coverage of war risk at normal rates. The companies cover the hazard either by charging extra premium or limiting the claim to surrender value if death results on account of war.

Aviation

There are two types of persons engaged in aviation, viz., passengers and pilots. A passenger who travels by a recognised airliner over a scheduled route is covered for aviation risk without any extra charge. If he dies during the journey, the full assured sum will be payable to his representatives. As regards the persons engaged in aviation as pilots, an extra charge for aviation risk has to be imposed. If an assured wants to change for a regular service in aviation, he has to inform the company and pay the necessary extra charge, otherwise only the surrender value will be paid if he happens to die on account of his new job.

Insurance of women

The women earning their own living have their dependants and so need insurance. Previously because of the belief that women were not as strong as men, insurance policies were issued on their lives at higher premium rates. Experience has shown that the risk, in case of women, is on the other hand lower. The average length of life of women is somewhat greater than that of men because of a smaller proportion of bad habits. The married women are either not granted insurance at all or granted for smaller amount because they have the additional hazard of childbirth and are also dependant upon their husbands for support and the need for insurance is much less.

In India, the insurance companies are generally prepared to entertain the proposals for assurance on the lives of healthy widows and single women who maintain themselves and their dependants by their own earnings, e.g., teachers, nurses or women engaged in commercial pursuits or having an independent

income. However, the insurance is not granted to illiterate women or to those being in Purdah or of less than 25 or 20 years in age. A married woman can also take a policy provided her husband is already insured and if not, takes a policy on his life at least for a similar amount. An extra premium over tabular rates is charged on all standard female lives generally until the attainment of the age of 50. The companies also stipulate that if the woman dies within one year of taking assurance on account of pregnancy the premium alone will be refunded.

Finances of the Applicant

When the company receives the proposal form it will try to find out whether the applicant's finances are sufficient to warrant the amount of insurance applied for. The question is of still greater significance in case of insurance for very large amounts. The company should always be on its guard to prevent the issue of more insurance than is justified by the circumstances of an individual case. Insurance granted for a very large amount in proportion to the assured's income involves moral hazard and is a case akin to over-insurance. Of course, it is not an easy task to estimate as to what constitutes a proper insurance in an individual case but the company should at least try to know the general financial position of the applicant for the purpose. If the insurance appears to be in excess of an amount the proposer's finances would seem to warrant, the company may offer a policy for a reduced sum or offer a plan different from that applied for.

Past History and Moral Hazard

The company should get the information whether the applicant is married or single. Again one of the usual questions in the proposal form is regarding the amount of insurance carried by the applicant with other companies and whether or not an application had ever been rejected by any other company or issued at premium higher than the standard rates.

The company should ascertain the causes of such eventualities, if any. Similarly, a scrutiny of family history will bring to light the latent physical or marital defects.

The use of drugs or alcoholic beverages has a bearing upon the hazard and frequently furnish cause for declination. The knowledge of all the above points will go a great way in the proper assessment of the risk and enable the company finally to select or reject the risk.

Retention of Risk

After selecting a risk, the insurance company need not retain the whole of it and at times it is not desirable as well to do so. Each company must fix a maximum limit of insurance on a single life in view of the total amount of insurance in force with the company and the amount of surplus funds. Of course, the limit of retention in an individual case is a matter largely of opinion and financial judgment but the company should see that the claims in a single year do not exceed the expected amount. The amount of insurance beyond the limit of retained risk should be reinsured with other companies. Of course, this arrangement does not affect the assured in any case.

CHAPTER IX

SUBSTANDARD RISKS

As stated above, the lives can be classified in three categories, viz., standard, sub-standard and un-insurable. To the first category belong those lives which are selected according to the principles enunciated above and about whom it is expected that the mortality rate will conform to that considered in premium calculations. They are also called normal or average lives. The lives belonging to the third group

are such that mortality rate amongst them will be so high as to make the premium for the assured completely prohibitive or to make the insurer feel that the risk is almost a certainty rather than a probability in that individual case. Such cases are outright rejected by the company. In between these two possibilities lies a group of persons who are not so bad as those in the third group but nevertheless whose mortality rate will be higher than that assumed in calculation of premiums. Such lives are known as Sub-standard, Impaired or Underaverage risks. They have an extra hazard which might be on account of occupation, residence, personal history of disease, physical condition, habits, lack of vitality, etc.

Extra hazard on account of occupation may be due to greater probability of accidental death, as in building industry; or because of the chances of occupational disease, as phosphorus poisoning in match industry. Residence in unhealthy climatic regions also involves extra hazard. Persons suffering from certain diseases in past are substandard on account of personal history. A record of tuberculosis or insanity in the family will render a life substandard due to family history. Excessive use of liquor or drugs makes a case of extra hazard on account of habits. Lack of vitality resulting in a heart murmur or an abnormal blood pressure is also a case of extra hazard.

Insurance of substandard lives

The substandard lives involve an extra hazard and if the mortality rate on account of it can be fairly accurately estimated, the insurance can be granted to such lives provided they are sufficiently large in number. The mortality rate of substandard group will decidedly be higher than that in a normal group but it does not mean that every member of the group will die earlier than all the members of normal group. Some members of the impaired group might live longer than a few individuals of the normal

group, but on an average it is certain that the average duration of life of all members in substandard group will decidedly be shorter than that in the normal group. In order to provide for the higher mortality rates, the company must impose special terms on all who are exposed to extra hazard.

For fixing the premium on substandard lives, it is not sufficient simply to know the extra mortality but it is also necessary to find out as to how it is distributed over the span of life, because the incidence of extra hazard in many cases changes with age. From this point of view, the substandard risks¹ can be broadly classified in three categories, (a) hazards which may decrease with increase in age, (b) hazards which may decrease with increase in age, and (c) hazards which may remain unchanged at all ages. Most of the occupational diseases belong to the first class. The effect of overweight on mortality is also similar. On the other hand, impairments arising on account of past history or residence are of the second category, e.g., the mortality rate on account of tuberculosis decreases in advanced age. The extra hazards due to physical defects tend to remain constant.

Fixing Premium on substandard Lives

On the basis of the above classification of extra hazards, the insurance companies have found out some broad rules for fixing premiums on sub-standard lives in such a way that the extra premium charged is just sufficient to cover the extra hazard involved. It does not mean that the treatment is absolutely scientific but for practical purposes it is quite equitable. The following methods of treating the underaverage lives for the purposes of insurance are more common.

¹ Strictly speaking the term 'substandard risk' relates only to physical impairment or impairment on account of family history. The extra hazards of occupation or residence do not render a life substandard but in actual practice they are also grouped with medical impairments for reasons of convenience and expediency.

Increase in age

One method to charge extra premium on a sub-standard life is to fix the premium applicable at higher age. How many years should be added to the present age of the applicant will depend on the type of hazard and its extent. This is called *rating up* of the applicant to a higher age. An examination of this system will reveal that the extra mortality for which provision is made is very small in beginning but increases at a rapid speed with the duration of the policy, because the increase in mortality rate from year to year is greater in old ages than in younger ages. This plan of rating up the age is suitable to such sub-standard lives whose extra hazard goes on increasing indefinitely with the increase in age.

Flat extra premium

According to this plan, a flat extra premium is added to the premium applicable for standard risks. It is fixed as a certain rate per Rs. 1,000 of insured amount. It is generally used in such cases where the extra hazard results in a constant addition to the mortality rate at each age. Really speaking, this will involve a greater charge than necessary as the extra premium, to be more equitable should not be based on the face amount of the policy but on the actual amount at risk. However, this point is not accounted for in actual practice, as it will involve very great labour and expense. Some companies vary the extra charge according to the plan of insurance.

Liens

Here the policy is issued to a sub-standard life for the same premium as applicable to a normal life but a lien for a particular sum is created against the policy in the beginning few years. If the assured happens to die within this limited period, the amount of lien is deducted from the assured sum and the balance is paid as a claim. However, if the assured

survives the term of lien, the whole assured sum becomes payable. The amount and the term of lien will depend upon the extent of impairment. This method is suitable in cases where the extra hazard is heavy in the early years of the policy but it goes on decreasing with increase in age. The amount of lien may either be constant or decreasing every year. The disadvantage of the lien system lies in the fact that a comparatively large lien is necessary to offset a small degree of extra mortality.

CHAPTER X

POLICY CONDITIONS

Acceptance Letter

After receiving the proposal form, medical report and the friend's report, the company will find out whether the life is a normal risk according to the standards of selection discussed previously and on being found such it will fix the premium according to the premium table prepared for standard lives and shall intimate the applicant of the acceptance asking him to pay the first premium within the prescribed time. If the applicant does not pay the premium within this period, the contract fails and the company will charge the medical examination fees from the applicant. However, if the applicant pays the premium in time, the risk commences and he now becomes the assured. On the receipt of the first premium, the company will issue an interim policy as the final policy takes a little longer time to be prepared and that will be sent to the assured as soon as it is ready. If the assured happens to die in this period the interim policy is treated as final policy and the company will pay the assured sum.

The Policy

The life insurance policy¹ is a highly decorated and attractive document containing the terms of the contract and is duly stamped. It is signed by two directors and counter-signed by the manager and bears the company's seal. It usually contains the policy number; type of policy; date of proposal; age at entry; name, residence and occupation of the assured; the sum assured; the amount of premium and the date when due; name of the nominee; non-forfeiture provisions and the other conditions regarding payment of premiums, revival of lapsed policies, surrender value, loans, assignment and nomination.

There is no standard form of a life policy for all companies but the policy provisions of almost all companies are standardised and they do not very materially differ from one another. The contractual relations between the parties to the insurance depend on the conditions contained in the policy and the law in force. Following are the standard conditions which are generally contained in life policies issued by the companies. The prospectus of an insurance company also contains them.

Proof of Age

As the rate of premium depends upon the age of the assured at entry, it is very essential that it should be quite accurate. For this purpose, the company requires the proof of age from the assured who should produce the age proof with the proposal or immediately thereafter as early as possible. Of course, the company does not withhold the issue of the policy for want of it, but does not admit any claim unless the age is proved to the satisfaction of the company.

Age can be admitted on production of a Certificate of Birth or Baptism, Horoscope, or Certificate Extract from School Record, Service Book or Record in Family Bible. In cases, where no evidence of age

1 See Appendix D.

is in existence at all a sworn affidavit on the company's form will be accepted.

However, if it is subsequently found that the age at entry was mentioned lower than the correct age, the assured sum is reduced to such amount as would have been purchased at the true age by the premium actually paid, or if the assured wants to retain the same assured sum, the premium will be increased according to the correct age and all the differences in past premiums with a compound interest rate at 6 per cent will be charged by the company. If the actual age comes out to be lower than the stated age, the difference in rate of premium is generally refunded but some companies state it very clearly that in such a case no refund is allowed. If the error is discovered after the claim has arisen, the assurance is treated as having been for so much as the annual premium paid will cover, at the true age.

Payment of Premiums

The premium rate is always stated for the assured sum of Rs. 1,000 and all premium payments have to be paid at the beginning of each policy year. Different premium rates for different types of policies are given in the prospectus of a company and they apply to normal lives i.e. those which are found medically fit and which have no extra hazard attached to them on account of sex, residence, occupation, etc. Ordinarily the premium is payable annually; but for the convenience of the assured, it can also be made payable half-yearly, quarterly or even monthly. Half-yearly premium is not equal to one-half of the annual premium but slightly more than that. This is necessary since the company loses interest on the unpaid premium during the early part of the policy year and the administrative expenses also increase with the frequency of payment. Recently a practice has developed where the instalment premiums are exactly in proportion to the annual premium but a reduction in

premium is allowed usually to the extent of 12 or 8 annas per assured sum of Rs. 1,000 if the mode of premium payment is annual or semi-annual respectively.

Again when the premiums are not annual but fractional, the part of premium will remain unpaid in the year of death and this should be deducted from the claim. Now-a-days many companies waive this deduction and they provide for this loss in determining the premium.

Days of Grace

One month but not less than thirty days of grace is allowed for payment of yearly, half-yearly or quarterly premiums and fifteen days if the premium is payable monthly. When the days of grace expire on Sunday or a public holiday, the premium has to be paid on the day previous to holiday. The period of grace is a period of automatic extension of policy and the policy remains in full force during this period. If the assured dies during the days of grace without paying the premium, the full assured sum becomes payable subject to the deduction of unpaid premium.

The remittance of premium should be in full without deductions of any charges and the company is not responsible for any delay in remittance through the Post Office or otherwise. For the convenience of the assured, generally the company sends him regular notices about premiums falling due, though it is not obligatory on it to do so and miscarriage or loss or want of such notice will not be entertained as a plea for the non-payment of premium. No such renewal notices are necessarily sent if the premiums are payable on monthly basis.

Commencement of Risk

The risk under a policy ordinarily commences on the date of receipt of the first premium in full, or from the date of the company's Acceptance letter whichever is later and the second instalment of the

premium falls due on a date calculated from the above date of commencement of risk. If the acceptance letter is a conditional one, the risk will commence on the fulfilment of that condition.

Ante-Dating

The date of commencement of risk may be put back within the calendar year for a period not more than three months to enable the proposer to get the benefit of lower premium rate at a younger age at entry. Such ante-dating of policy beyond three months is allowed by some companies after charging a high interest rate for the period between the date of commencement and the date of payment of premium.

Initial Expenses

All initial expenses incurred on account of medical examination, stamp duties, etc. are borne by the company in all cases, except when a proponent fails to pay the first premium within the days of grace from the date of company's acceptance letter, in which case he will be required to pay the preliminary expenses to the company. For this purpose, generally the company asks for an advance deposit from the proponent with the proposal form and it is utilised for the above contingency. If the contingency does not arise the deposit is either refunded or adjusted in the payment of the first premium.

Hazardous Occupation

If at the time of taking the policy, the assured is employed in a hazardous occupation or intends to take up soon after the insurance the hazardous occupation, he has to inform the company about this and the company may fix an extra premium to cover the additional risk, which is removed on giving up of the hazardous occupation. However, if the assured has already taken up an insurance and afterwards he changes to the hazardous occupation, the practice is

different with different companies, some allow him to do so freely while others charge an extra premium for the period of his working in that occupation.

Residence and Travel

Now-a-days, the policies are issued free from all restrictions as to travel, residence or occupation. Not only that there are no restrictions on residence or travel in any part of the world but it is also provided that if the assured proceeds to Europe or other salubrious climatic regions specified in the policy, he is allowed a fixed rebate on premium for the period of such residence there.

Alteration in Policy

It sometimes happens that the assured desires to change the terms of the policy after it has remained in force for some years. The change may be in form of alteration of the mode of payment of premium or alteration of the amount of assured sum, or converting a whole-life into an endowment assurance or vice versa. The alteration may be in favour of the company or against it. If the alteration results in increasing the premium rate it is favourable to the company; on the other hand, if due to the alteration the premium has to be reduced, it is against the company. The insurance companies generally grant those alterations which result in a higher premium after charging the difference in premiums with interest at compound rate for the time the policy has remained in force, e.g., a whole-life policy may be converted into an endowment or the term of endowment assurance may be shortened. If the alteration is such that the premium is to be reduced in future on account of it, the company has to guard itself against the tendency of unhealthy lives to make such changes by asking for a satisfactory proof of good health. Such cases may be when the assured wants to change the endowment policy into a whole-life one or lengthen the term of endowment policy. Many companies discourage such

alterations by clearly stating in the prospectus that no alteration from one class of insurance to another is permissible if it results in lowering the scale of premiums. However, the assured has to pay a certain fee on each alteration except when it is waived by the company.

Additional Assurance

If the assured desires to increase the sum assured within six months¹ of the original medical examination, he may be permitted to do so without a further medical examination, but he shall have to submit such evidence of his continued good health as the Directors may require and then a new policy for the increased sum will be issued. However, if he desires to increase the amount of insurance after six months, the request will be regarded as a new proposal to the extent of the increase and a fresh medical examination is necessary.

Suicide

In the event of suicide² committed by the assured within one year³ from the date of commencement, whether insane or not at the time, the policy will be null and void except to the extent of the bonafide interest thereunder acquired by any third party for valuable consideration who has at least one month prior to the date of suicide given notice to the company of his interest in the policy. Suicide after the expiry of this period will not affect the full payment of the claim in any way.

Lost Policies

Whenever a policy is lost or destroyed the assured should at once intimate the company with full particulars of the circumstances of loss or destruction and

1 The period is different with different companies. Some keep it three months only.

2 Death at the hands of justice is also added by many companies.

3 The period is not same with all companies.

the steps taken to trace the policy if not destroyed. On a satisfactory evidence of the loss or destruction, the company will issue a Duplicate copy after advertising the fact and will charge the assured the fee for issuing the duplicate copy, stamp duty and other incidental charges.

Assignment¹

Life policies have always been held to be, in the absence of fraud, freely assignable. An assignment may be made to anyone for valuable consideration or as a gift out of love and affection. The assignee need not have any insurable interest in the life of the assured and thus it is clear that a person debarred from taking a policy on a third party's life due to want of insurable interest, can get it by asking such a third party to obtain a policy and then assign it to him. But if the assignment can be proved to be merely a subterfuge to evade the rule of law requiring an insurable interest, such a policy will be null and void.

The assignment may be made either by an endorsement upon the policy itself or by a separate instrument duly stamped, signed in either case by the assignor or his representative and attested by at least one witness.

An assignment is not operative against the company and confers no rights to sue until a written notice of the assignment with the endorsement or the instrument of the assignment, or a copy thereof certified to be correct by both the assignor and the assignee or their duly authorised agents, has been delivered to the company. The priority of assignment will be governed by the date of delivery of such notice to the company. The notice of assignment will be registered and acknowledged by the company on payment of a fee of Rupee one per each assignment. However, every company makes it very clear by stating in the policy that in registering an assignment the company

1 See section 38 of Indian Insurance Act.

does not accept any responsibility or express any opinion as to the validity to legal effect thereof, and the parties interested are supposed to have taken legal advice and satisfied themselves as to the validity or effect of the assignment.

Nomination¹

The assured can, at any time before the maturity of the policy, nominate the person or persons to whom the claim on policy shall be paid in the event of his death. A nomination can either be incorporated in the text of the policy itself or can be made by an endorsement on the back of the policy. To be effective, it should be sent to the company, for registration and acknowledgement.

Before the maturity of the policy, a nomination can be cancelled or changed by an endorsement or a further endorsement or a Will as the case may be. The company should at once be informed in writing of any cancellation or change, absence of which it shall not be liable for any payment under the policy made bona fide to a nominee registered in the records. A fee of Re. 1 is generally charged for registering any cancellation or change.

When the policy matures by the survival of the assured or where the nominee dies before the maturity of the policy, the policy money will be payable to the assured or his legal representative as the case may be. An assignment of a policy automatically cancels a nomination. Thus it is clear that a nomination does not give the same protection against creditors as an assignment ordinarily does.

Incontestable Clause

The insurance contract is a contract of good faith and, therefore, the policy can be avoided if it is found to be lacking in it. Many insurers took advantage of this principle and long after the policy was taken,

1 See section 39 of Indian Insurance Act.

they tried to avoid the contract on grounds of alleged deliberate misrepresentations or omissions. This worked as a great hardship to the insured persons and specially the beneficiaries after their death. It came to be slowly realised that the beneficiaries named in a life policy ought not to be allowed to suffer for mistakes innocently made in connection with the application for insurance. In order to protect the interests of the assured, many countries have enacted legislations requiring the companies to provide that the policies shall be incontestable after a stated period from the date of issue except for non-payment of premiums or for fraud. The purpose of this clause was to give "an assurance to persons doubtful of the utility of insurance, that neither they nor their families, after the lapse of a given time, shall be harassed with lawsuits when the evidence of the original transaction shall have become dim, or difficult of retention, or when, perhaps, the lips of him who best knew the facts are sealed by death." Thus by this clause all the policies are made undisputable after the lapse of the stated period.

In India, too, the Insurance Act¹ provides that no policy after it has remained in force for two years, will be disputed on the ground that any statement made in the proposal or to the Medical Officer or Referee or in any other document leading to the issue of the policy was inaccurate or false except on the ground that such statement was on a material matter and fraudulently made by the policyholder and that the policyholder knew at the time of making it that the statement was false.

Settlement of Claim

A policy may become a claim either by the assured's survival of a fixed period or by his death. In

¹ See section 45.

the former case, the assured amount will be paid to the person entitled thereto on submission of the proof of age (if not previously established) and the duly discharged policy. In the latter case, the claim will be paid after the receipt of the (i) proof of the assured's death and (ii) the title.

The proof of death can generally be made by filling up the following forms supplied by the company:—

1. Claimant's statement.
2. Certificate of the attending physician.
3. Certificate of Registration of Death by the Official Registrar of Deaths or other competent person present at the funeral.
4. Certificate of Identity either from employer or from other responsible person.

The proof of the title of the claimant of the policy moneys will have to be furnished in all cases where the policy has not been duly assigned or a nominee has not been appointed by the assured during his life time and may be any of the following:—

In the Presidency Towns:—

Probate of Will from the High Court, if a Will has been left; or

Letters of Administration from the High Court, if no Will has been left; or

Where the total amount of Estate left by the Deceased does not exceed Rs. 2,000 a Certificate of Title from the Administrator-General which is very easily obtained.

In the Districts:—

Succession Certificate, whether or not a Will has been left from the Court of the District Judge having jurisdiction where the deceased resided, or an Administrator-General's Certificate as above mentioned.

If the company feels that the claim over a policy cannot be settled due to conflicting claims or insufficiency of proof of title or any other adequate reason, the Insurance Act¹ requires the company to apply to pay into court the moneys due under the policy. Such payment into court should be made within nine months from the date of the maturity of the policy or from the date of intimation of the death, as the case may be.

Once the policy moneys have been paid into court, the claimants can obtain them by applying to the court only. In order to avoid this inconvenience, the claimants should prove their claim and title as early as possible.

Optional Modes of Settlement

Generally the policy moneys are paid in one lump sum when the policy becomes a claim but the practice is now growing with companies to allow the assured or his beneficiary to select any one of the following optional modes of settlement: (1) Payment of interest, annually or otherwise, at a specified rate on the assured sum for a term of years together with payment of the principal sum at the end of that term. (2) Payment of equal instalments, annually or otherwise, including both principal and interest, for a fixed term. (3) Payment of equal instalments for a specified term of years and if the beneficiary is still alive at the end of the term they may be continued till his death. (4) Secure a life annuity or annuity certain with the claim proceeds payable during rest of the life after maturity or for the benefit of the beneficiary as the case may be.

1 See section 47 of Indian Insurance Act, 1938.

CHAPTER XI

POLICY CONDITIONS (Continued)

Lapsing of a policy

Once an insurance is granted, the company shall remain liable for the claim so far the assured continues to pay the premiums when they fall due. If the assured fails to pay any premium within the days of grace, the company's liability ordinarily ceases under the policy and the contract comes to an end. Under such circumstances the policy is said to have lapsed. Thus it will be seen that if the assured is unable to pay the premium in any year, he will have to forego his rights under the policy and this works as a great hardship specially when the policy has remained in force for a long time. In order to help the insured against such an eventuality, the insurance companies generally provide the following special benefits:

Revival of Lapsed Policies

If a policy lapses by non-payment of premium within the days of grace, it may be revived to the full policy amount at any time during the lifetime of the assured provided that he is still an insurable risk. The revival can be effected on payment of the overdue premiums with compound interest thereon at a stated interest rate per annum calculated from the date of the unpaid premiums.

Usually, however, a medical examination is not necessary where the lapse has occurred very recently,¹ the company in such cases requires only the satisfactory evidence of assured's continued good health. But if the revival is sought after the stated period, the assured has to submit, at his own expense, the evidence of insurability satisfactory to the company, which may include not only his fresh medical examination but also an enquiry into his personal habits, financial standing, etc., as is done on an applica-

¹ Six months or one year as allowed by a company.

tion for a fresh proposal. In the absence of such a condition, many policyholders who had discontinued their policies and who unexpectedly found themselves in poor health would take advantage of the right of revival, while others in good health would not do so. However, in India the companies ask for a fresh medical examination only.

Reinstatement by Redating

If the policy has not acquired a surrender value and is discontinued due to non-payment of premiums, it can be reinstated without the payment of the outstanding premiums on the production of a satisfactory evidence of the assured's continued good health. In this case, the premium payable on the re-issued policy would be higher as it would correspond to the age on the date of revival and the term of the policy will be extended by a period for which the policy remained lapsed.

Surrender Value

When the assured is unable to continue the premium payments on his policy, he can surrender it to the company and acquire 'the cash surrender value.' With this payment, the contract comes to an end and the assured will get the cash value without any liability of further premium payments. The amount of surrender value will depend upon the class of the policy and its duration.

According to the level-premium plan, it was seen that in the early years of a policy the premiums are charged higher than the cost of insurance and this excess charge goes on accumulating at compound interest rate and is known as 'fund' or 'reserve,' which is a liability of the company towards the assured. The contribution of each policyholder towards this 'reserve' is called the *Reserve-value* of his policy and sets the limit upto which the surrender value can be paid. Usually in the early years of the policy, this reserve value of a policy is nil or negligible on account of medical fees, procurement commission and the other

more, the average general vital stability and expectation of longevity anterior to withdrawals are reduced in extent and power by the retirement of these vigorous members. Hence equity requires that a compensation should be afforded to the continuing members by retaining in the common fund a portion of the reserves connected with surrendered assurances as a rectifying measure for the augmented mortality. Again by the defection of the policyholders who surrender, the company has to incur additional expenditure in maintaining the number of policyholders by seeking new members. Further, when cash is paid on surrender of a policy it may cause financial loss to the office either because the assets might have to be sold at an unfavourable time or the opportunity of investment at higher interest had to be forgone. The surrenders generally increase or decrease according to the interest rates as they are high or low. Lastly, the guarantee of cash values warrants to some extent a greater liquidity in the assets which means a lower yield.

The usual method of expressing the surrender value is the percentage of the premiums paid excluding the first year's premium. Generally 25 to 30

per cent of the full year premium payments are given as surrender value. When the policy has received bonus additions, their reduced reserve value is added to the surrender value of the original policy money. Instead of it, some companies allow a higher percentage as surrender on the participating policies, nearly 40 per cent.

The amount of surrender on any policy depends on its reserve-value and, therefore, on such policies which do not have any reserve, no surrender value is allowed. Such cases are of term assurance, reduced premium assurance, pure endowment without return policies, immediate annuity, etc.

Extended Term Assurance

Under this plan, also known as *continued term insurance*, if any premium remains unpaid at the end of the days of grace and the policy has been in force for at least three years, the insurance will continue as paid up for the full amount of original assured sum for an extended term from the due date of the premium in default. The term for which the policy continues in force is that period which the net cash value (after deducting the debts to the company or adding the accrued bonuses as the case may be) at the premium due date will purchase applied as a net single premium and it can be known from the company on application. However, the term does not extend beyond the original maturity date of the policy.

If the assured dies during this term, the full amount becomes payable to his representatives but if he outlives the period of term assurance, nothing or a very small amount of cash will be paid which will depend on the total number of premiums paid.

Automatic Non-Forfeiture

The assured at the time of taking the policy or at any time before its lapse may ask for the inclusion of automatic non-forfeiture option in his policy, which provides that if the assured is unable to pay the pre-

or three years of the policy when it has not acquired any surrender value.

The main purpose of this provision is to protect the accidental lapses through oversight or due to temporary shortness of funds, non-receipt of notice, change of residence, etc., and, therefore, some companies limit the automatic non-forfeiture privilege only for the first one or two unpaid premiums. Such a plan is called *limited non-forfeiture*. But if no such restriction is imposed and the policy is kept in force till the full surrender value is exhausted, the arrangement is called *unlimited non-forfeiture*.

Reduced Paid-up Insurance

If the policyholder is unable to pay the further premiums and does not want to assume any liability on account of them in near or remote future, he can have his policy paid up for a smaller amount. This option is available to him only when the policy has remained in force for at least two or three years. The policy becomes proportionately paid up by reducing the assured sum in such a way that the reduced

amount will bear the same ratio to the original sum assured as the total number of premiums actually paid bears to the total number of premiums stipulated for in the policy. The reduced amount is called the *paid up insurance* or the *paid up value of the policy* and the policy is called the *paid up policy* or *free policy*. This paid up value is available only when the full assured sum would have become payable under the original terms had the policy been kept in full force. If the policy is a participating one, all the bonuses accrued so far will remain attached to it. Some companies allow the policyholder to receive the bonuses in future as well.

Thus it is to be marked that only those policies can be made paid up where the total number of premiums to be paid is fixed in advance, e.g., endowment and limited premium whole life policies. However, now-a-days the companies grant this privilege to ordinary whole life policies as well, the paid up amount in their case being quoted on application by the assured.

Some companies make this privilege automatic and include it in the non-forfeiture provisions. In that case when the premium is not paid, the policy is made paid up in the event of no other election being made by the policyholder. However, this practice is not common to all the companies and they allow it only on the receipt of proper notice from the assured.

Policy Loans

The majority of life offices are prepared to grant loans on the security of their policies to an amount slightly less than the surrender value, usually 90 to 95 per cent of it. The insured is charged a reasonable rate of interest, generally six per cent, on the amount of loan. The assured can utilise this loan for the payment of the premiums or to get over the temporary financial stringency.

LIFE ASSURANCE
APPENDICES

The.....Life Assurance Co., Ltd.

Agent's No..... Name.....Advance Deposit Rs.....
 Pro. No.....Policy No.....

PROPOSAL FOR ASSURANCE

QUESTIONS TO BE ANSWERED BY THE PERSON WHOSE LIFE IS TO BE ASSURED.

All answers to be filled in by applicant fully and distinctly in his own handwriting.
 Answers must be given in words. Strokes of the pen or dots or dashes cannot be accepted as replies.

1. Your Name in full.....	Please write in Block Letters.
Your contracted Name to be stated in the Policy	
Present Full Occupation.....	
Previous Full Occupation.....	
Present Address.....	
Permanent Address	
2. (a) Your Father's name in full. } (a)	
(b) Paternal Grandfather's name in full. } (b)	
3. Place and date of your Birth } Born at.....In the District of.....	
} on the.....day of.....In the year 1.....Age nearer birthday	
4. (a) Can you produce as proof of your age, (1) Municipal Certificate of Birth, (2) Certificate of Baptism, (3) Original Horoscope, (4) Certified Extract from School or College records? (a)	Proof of age should be sent along with this proposal or as soon as convenient after its acceptance.
(b) If not, what other acceptable evidence of age can you produce? (b)	
5. What is the object of the proposed Assurance? NOTE:—If family provision, it is desirable to assign the Policy after issue to a Member of the family or nominate such person to facilitate immediate settlement of the claim.	

INSURANCE

Please write
in Block
Letters.

6. (a) Do you wish to nominate any person to receive the policy moneys after your death, in terms of the Insurance Act?	(a)	.....
(b) If so state the name, relationship and age of the nominee.	(b)	Name Relationship.....Age.....
Nominations can be validly made only under policies which provide for payment of the Policy moneys in India or in any Indian State where Nomination is recognised by law.		
7. Do you intend, or are you liable to be called upon, to engage (1) in Aviation or, (2) any hazardous occupation or pursuit? (3) If so give particulars.	(1) (3)	..... ..... .....
8. Sum to be assured Rs.....	(2)	.....
9. Are the premiums to be payable yearly, half-yearly, quarterly or monthly?		.....
10. Kind of policy and its term.....		.....
11. State which of the following provisions you elect to be incorporated in the Policy to avoid its lapsing. (a) Reduced Paid-up Amount (b) Automatic Non-forfeiture		.....
12. (a) Is your life now being proposed for Assurance proposed to any other Life Assurance Company? If so, to what Company or Companies and for what amount?	(a)	.....
(b) Has it ever been proposed for Assurance to this or any other Company or Companies? If so, state when, for what amount, to what Company or Companies and the Policy number.	(b)	.....
(c) (1) Has any proposal for assurance or for revival of a Policy ever been declined, (2) Accepted at an extra premium, (3) Accepted with a lien, (4) Accepted otherwise than as proposed, (5) Delayed, or (6) Withdrawn? If so, give particulars.	(c).....	.....
(d) Or has it been accepted at the ordinary rate?	(d)	.....

INSURANCE

13. For the purpose of reference, give the name, etc., of a friend who best knows the state of your health and habits, and who is not a Relative, Employer, or Servant of Yours and not interested in this Assurance.

Name
 Occupation
 Address
 He has known me for years.
 Give the name of a friend who best knows your father and how long you have known him, and who saw you within the last fortnight or so.

14. Have you within the past five years consulted any medical man for any ailment, not necessarily confining you to your house? If so, give details and state names and addresses of medical men consulted.

15. Do you intend, or are you liable to be called upon to engage in any of the Combatant, Non-Combatant, Reserve or Auxiliary Services?

I, the above designed day of,
 proposed to be assured, do hereby declare that the foregoing statements are true and I do hereby agree that these statements and this declaration along with the further statements made or to be made at the time of Medical Examination and the answers to the questions put or to be put to me by the Medical Referee of the Company in connection with the Assurance with the declaration relative thereto shall be the basis of the contract between me and the Company and that if any untrue statement be contained therein, all moneys which shall have been paid up on account of the said Assurance shall be forfeited and the Assurance itself shall be absolutely null and void.

Signed by me at.....

Signature of Witness

Occupation

Address

INSURANCE

APPENDIX B

PRIVATE AND CONFIDENTIAL.

Serial No.....

Rs....., Dated.....

Addl. Serial No.....

Rs....., Dated....., Aged.....

MEDICAL EXAMINER'S REPORT

on the Life of Mr.....

- | | | | |
|-----|---|-----|------------|
| (a) | Who introduced the applicant to you? | (a) | |
| (b) | (1) Are you personally acquainted with the applicant?
(2) If you have attended him professionally, state when and for what complaint | (b) | (1)
(2) |
| (c) | State minutely such personal marks and peculiarities as will enable the applicant to be identified hereafter | (c) | |
| (d) | Are you satisfied of his identity? | (d) | |

Please satisfy yourself completely as to the identity of the Applicant, as some cases of false personation have occurred and to enable you to establish the identity of the Applicant it is always desirable that he is introduced to you by the Agent, the Inspector or a responsible Officer of the Company.

- | | | | |
|--|---|-----|------------|
| 2. (a) | (1) Figure and physical development generally
(2) Make of Chest | (a) | (1)
(2) |
| (b) | STATURE and Weight | (b) | |
| <p>Note.—The Medical Examiner is specially requested to personally demonstrate to the applicant the procedure of complete Expiration and full Inspiration.</p> | | | |
| (c) | Nationality and Religion | (c) | |
| (d) | Is the complexion anaemic, puffy or otherwise unhealthy? If so, in what particular? | (d) | |
| (e) | What is his apparent age? | (e) | |
| (f) | Does he show any signs of degeneration or premature age, and if so, what are they? | (f) | |
| (g) | Is there anything injurious to health in his place of residence, occupation or ordinary manner of life? | (g) | |

(b)	CHEST (over nipples) } on complete EXPIRATION.....Inches. stripped } on full INSPIRATION.....Inches. ABDOMEN (over navel) stripped.....Inches. HEIGHT (without boots).....Ft.....St.....lbs. WEIGHT (with thin clothes).....St.....lbs. Has the Weight been increasing, decreasing or stationary

<p>3. RESPIRATION. (a) Have you examined his Lungs with the Stethoscope and by percussion?</p> <p>(b) Are there any abnormal sounds present? ..</p> <p>If so, their character?</p> <p>(c) Has he had any spitting of blood, or ever suffered from Bronchitis, Influenza, Pneumonia or Pleurisy?</p> <p>If so, when?</p> <p>(d) Is he subject to Sore Throat, enlarged tonsils, asthma, habitual cough, or shortness of breath?</p> <p>(e) What is the frequency and character of the Respiration? (See Special Instructions.)</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e) Rate,.....per Min. Character.....*See below.</p>
<p>4. CIRCULATION. (a) Have you examined the Heart and great vessels with the Stethoscope?</p> <p>(b) Is the Heart normal in size, position and impulse? ..</p> <p>If not, in what particular?</p> <p>(c) Is there any abnormal sound with the heart's action? ..</p> <p>Or any indication of disease of heart or vessels?</p> <p>(d) (1) Has he ever had attacks of Palpitation or difficulty in breathing, or dropsy or any oedema of the face or ankles?</p> <p>(2) Are the heart sounds normal, weak or accentuated.</p> <p>(e) (1) What is the RATE and CHARACTER of the Pulse?</p> <p>(2) Is it constant and equal on both sides? ..</p> <p>(f) (1) Is there any venous fullness or pulsation in the neck?</p> <p>(2) Is it short and thick?</p> <p>(g) BLOOD PRESSURE.—To be carefully recorded (1) in all cases of Rs. 5,000 and upwards, (2) on all lives aged 50 and upwards, (3) in all cases where the Examiner detects or there is a past history of Albuminuria, Nephritis or Heart Disease.</p>	<p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d) (1)</p> <p>(2)</p> <p>(e) (1) Rate.....per Min. Character.....*See below.</p> <p>(2)</p> <p>(f) (1)</p> <p>(2)</p> <p>(g) Systolic. Diastolic. Pulse Pressure. Instrument used.</p>

*Note.—It is particularly requested that the Number of the Pulse and Respiration be stated in every case. Also if the frequency of these be found above 88 and 24 respectively on first examination they should be again taken, and in the case of the Pulse, in the 3 postures standing, sitting and lying down, and under the "eye-ball compression" and "holding the breath with mouth open" tests, until fully satisfied of the character, and the results noted herein.]

5. DIGESTION. (a) Does the Tongue indicate disturbance of the digestive functions?
 (b) (1) Is there any Pyorrhoea Alveolaris, and if so, is it marked or slight?
 (2) If not, are the Teeth and Gums otherwise healthy?
 (c) Is the Liver or Spleen enlarged? If so, is the enlargement just within, or how much beyond the costal margin?
 (d) Has he ever had any affection of the Liver, Gall Bladder, Stomach or Bowels, Appendicitis, Fistula or Haemorrhoids, and if bleeding and when? The Parts must be examined in all cases. (See Special Instructions.)
 (e) Has he had Diarrhoea, Dysentery, Sprue, Gastric or Duodenal Ulcer or Jaundice, of what nature, when and for what length of time?
 (f) (1) Is he suffering from Hernia? If so, of what nature?
 (2) Is a well-fitting Truss or Support regularly worn?

PLEASE SEE SPECIAL INSTRUCTIONS ON LAST PAGE.

6. FEVERS. (a) Has the Applicant had Gout, or acute, sub-acute or chronic Rheumatism; if so, when, and what parts have been affected, how often, and with what severity and results?
 (b) (1) Has he had Fever of any kind, Filariasis or Plague and when?
 (2) What was its nature, severity, duration and results as affecting the general health?

7. EXTREMITIES AND SURFACE:—
 (a) (1) Are there marks of any cutaneous disease, or Small-pox or vaccination?
 (b) (1) Do you find any enlarged Glands, Scars, Tumours, or Varicose Veins, or any evidence of Tubercular Disease, and where?
 (2) Are there any physical defects or deformity? If so, how far do they handicap the applicant?
 (c) Do you find any enlargement of the Thyroid Gland; if so, state whether it is stationary or increasing in size during the past year, whether the whole thyroid is involved or only a part, and whether any toxic or pressure symptoms are present?

8. NERVOUS SYSTEM. (a) Are there any indications of Vertigo, Epilepsy, Paralysis, Inco-ordination of movements, tremors of hands, or fingers, Insanity or any other disease of the nervous system?

(b) Of Neuralgic Affection or any form of Headache?

(c) (1) Has he ever had any disease of the Eye, or (2) Is there any impairment of the eyes, or (3) has he suffered from Deafness, Earache or any discharge from the ear, when and for how long? (4) State their present condition.

(d) Are the pupillary and patellar reflexes normal? If not, give particulars.

(e) Particularly state if you have reason from report, observations, general appearance of the Applicant, or from any particular symptoms such as tremors of hands, fingers or tongue to suspect that he is not of TEMPERATE HABITS in any respect or is addicted to heavy smoking.

9. GENITO-URINARY DISEASES. (a) Has he ever had Renal Disease, Colic, Stricture, Stone, Gravel or other disease of the Genito-Urinary System and when?

(b) Examine the Urine for Sugar and Albumen, note both the Specific Gravity and quantity passed at examination, and say if healthy.

Note.—If the Specific Gravity is above 1024 or below 1010 please give reason for same and make a second examination, giving both quantity and Specific Gravity. If albumen is found on first examination, two further examinations should be made on each occasion about two hours after a full meal and the results recorded.

(c) Was the Urine passed in your presence?

(d) Has he had Venereal disease, such as Gonorrhoea, Gleet, Syphilis, Hard or Soft Chancre or Bubo, and, if so, when and in what form and with what result?

(e) Has he had any Varicocele, Hydrocele, Filariasis, Haematocele, Orchitis or any other disease of the Testis? If Hydrocele is present, give circumferential girth of whole Scrotum and vertical girth of each side in Inches.

(a)

(b)

(c) (1)

(2)

(3)

(4)

(d)

(e)

(a)

(b)

Quantity passed at examination.....

Specific Gravity.....

Albumen.....Sugar.....

Reaction.....Is it healthy?.....

(c)

(d)

(e)

INSURANCE

10. Describe fully and unreservedly any disease or circumstance other than above-referred to, or known or suspected by you rendering the life more than usually hazardous?

11. Should you know, or even suspect the existence of any circumstance or fact, past or present, with which the Company should be made acquainted in this case, but not seemingly called for in the printed Queries in your Report and not there mentioned by you, please do so here; else make sure that the information reaches the Head Office, by letter direct and at once.

12. For Females.

- (a) Do you find any evidence or have you any suspicion of pregnancy?
- (b) Has the menstruation ceased? If so, since when? ..
- (c) Is there any suspicion of organic disease of the ovaries or uterus? If any operation performed, cause and date.
- (d) Are the functions of the ovaries and uterus normal?
- (e) Are the breasts healthy? ..
- (f) How many conceptions have taken place? ..
- (g) How many have gone full time? How many miscarried, with cause and date?
- (h) (1) Has a per Vaginal examination been made? ..
(2) If so, by whom?

Note.—The Parts must be examined and a per Vaginal examination carried out in all Female cases.

SUMMARY AND CONFIDENTIAL STATEMENT AND OPINION.

Note below your opinion of Life with reference to the following classification:—

FIRST CLASS: A Life in perfect health and of sound constitution with good personal and family history and with prospects of longevity as good as those of healthy persons generally of the same age.

SECOND CLASS: A Life which from family history, or personal history or condition has prospects of longevity not as good as a First Class Life but which may be accepted with an extra. (In this class state what extra you would consider necessary and for what reasons).

THIRD CLASS: A Life which is uninsurable.

(Bad Life).

Signature

Degree/Diploma, University and when obtained

Appointment

Address and Date

NOTE:—If this date varies from that on which Personal Statement was signed by Proposer the Medical Examiner is requested to state reason.

QUERIES TO BE ANSWERED CORRECTLY AND LEGIBLY BY THE LIFE TO BE ASSURED IN HIS OWN HANDWRITING.

ANSWERS must be given in words. Strokes of the pen or dots or dashes cannot be accepted as replies.

1. (a)	What is your name and profession? (in full)	..	(a)	
(b)	Give previous occupation if any (in full)	..	(b)	
(c)	What is the amount and system under which you wish to insure your life?	.. ..	(c) Amount	System
2.	Your age nearest birthday?	..	(c) Amount	System
Note.—When proof of age can be furnished the applicant is requested to send such proof with his proposal.				
3.	Are you (a) Married, or	(b) Single?	..	(a) ..
4.	(a) Have you had small-pox and when?	..	(a) ..	
(b)	Have you been Vaccinated successfully, if so, when and how often?	..	(b) ..	
5.	(a) Have you ever suffered from any of the following ailments? If so, when and for how long?	..	(a) ..	
(1)	Cough, Shortness of Breath, Palpitation, Asthma, Pneumonia, Pleurisy, Consumption or any other disease of the Chest?	..	(1) ..	
(2)	Appendicitis, Jaundice, Dropsy, Diarrhoea, Sprue or Dysentery, Anaemia, Kidney Disease, Colic, Varicose Veins or Ulcers, Piles, Fistula, Diabetes or Carbuncle?	..	(2) ..	
(3)	Typhoid, Influenza, Filariasis, Elephantiasis of leg or Scrotum, Kala-Azar, Blackwater or any other Fever?	..	(3) ..	
(4)	Insanity, Fits, Paralysis, Gout, Rheumatism, Pyorrhoea Alveolaris, diseases of eyes or ears, Syphilis, Gonorrhoea, Hard or Soft Chancre, Stricture, Varicocele, Hydrocele, and swelling or tumour of the testis or other organic disease or infirmity?	..	(4) ..	
(b)	Do you ever suffer from Malaria? If so, how often and for how long, and the date of the last attack?	..	(b) ..	
(c)	Any other illness, accident or injury. Whether Considered by you to be Important or not? If so, give particulars stating when and how long you were confined to bed or to the house.	..	(c) ..	
(d)	(1) Are you suffering from any kind of Hernia?	..	(d) ..	
(2)	If so, do you wear a Truss regularly and since when?	..	(1) ..	(2) ..

INSURANCE

6.	(a) How long have you resided continuously in India, Burma or in other tropical climate? (b) Have you been compelled to leave India or the Tropics, or to reside in the Hills for the benefit of your health? (c) If so, for what disease and when? (d) Has your weight been increasing, decreasing or stationary?	(a) (b) (c) (d)				
7.	(a) Are you of active habits? (b) Are you sober and temperate? (c) Have you ever been of intemperate habits? (d) Do you take Alcoholic Liquor? If so, how much during the day, of what kind, and at what hours? (e) Are you addicted to (1) tobacco smoking or (2) to the use of any narcotic drug?	(a) (b) (c) (d) (e) (1) (2)				Exact cause and Date of death and duration of last illness. *See below.
8.	Family History.		Usual state of health with special reference to ailments, if any, during the last year or two.	Age at death.		
	Father					
	Mother					
	Brothers Total Living Total Dead					
	Sisters Total Living Total Dead					
	Wife (or Husband)					

* Note.—If the cause of death be Fever, the date, nature and duration of illness, and symptoms exhibited, must be given, especially whether accompanied by any Cough.
If the cause of death be Childbirth, the time that elapsed between the birth of the Child and death of the mother and the nature of the illness must be given.
If the death be due to Drowning or similar other fatality, state clearly if it were accidental, suicidal, or in delirium.

PLEASE SEE SPECIAL INSTRUCTIONS ON LAST PAGE

9. Is there any hereditary disease in your family such as Insanity, Epilepsy, Gout, Rheumatism, Diabetes, Asthma, Consumption, Scrofula, Cancer or Leprosy on either the paternal or maternal side (grand-parents, uncles, aunts, etc.) and has any member or members suffered from any one of these and when?

10. Have you ever attended personally or come in close contact with any person, who may be your relative, friend or otherwise, suffering from Consumption, Typhoid Fever or any other infectious Disease, or lived in the same house? If so, when, and from which of these diseases was the party suffering?

11. Has your Life ever been proposed for Assurance at this or any other Company or Companies and when? (Proposal for Assurance includes proposal for revival of a lapsed policy).

If so (a)	Mention the name of the Company	..	..	..
(b)	Was it accepted at the ordinary rate?	..	..	..
(c)	Or at an increased rate, and if so, at what rate?	..	..	..
(d)	Or with a lien?	..	..	..
(e)	Or otherwise than as proposed?	..	..	..
(f)	Or delayed or declined?	..	..	..

12. (a)	What has been your usual state of health?	..	..
(b) (1)	When last were you under Medical treatment?	..	..
(2)	For what ailment and how long?	..	..

13. (a)	Are you now absent from duty on Medical certificate?	(a)
(b)	Are you applying for leave on Medical certificate?	(b)
(c)	If so, send a copy of the Official Statement of your Case to this Office.	(c)

14. For Females.

(a) Do you observe purdah ?	.. .. .	(a)
(b) If unmarried or a widow, do you expect to marry or remarry in the near future ?	.. .. .	(b)
(c) (1) Are your menstrual periods regular ?	.. .. .	(c) (1)
(2) When did you menstruate last ?	.. .. .	(2)
(d) Are you pregnant at present ?	.. .. .	(d)

DECLARATION TO BE MADE BY THE LIFE TO BE ASSURED AFTER EXAMINATION BY THE MEDICAL

EXAMINER.

This Declaration to be read over and also signed, in the presence of Medical Examiner.

I, the undersigned, .. the person whose life is proposed to be assured, do hereby declare that according to the best of my knowledge and belief I am now in good health, that my age does not exceed .. years, that the foregoing statements are true, and that I have fully and faithfully answered all such questions as have been put to me by *Dr. Medical Examiner, without concealment or reservation of any kind, and I agree in case I fail to complete the proposal by due payment of the first premium, to pay to the Company the amount of the medical fee incurred by it on my account in reference thereto.

* Name of Medical Examiner, to be given in full.

Declared and signed at .. this .. day of .. 19 .. before me.

Medical Examiner.

Usual Signature of person whose Life is to be Assured

TO THE MEDICAL EXAMINER.

SPECIAL INSTRUCTIONS.

The Medical Examiner is requested to note the following been drawn up for his guidance to enable him to assist the Director in dealing fairly and equitably with the proposal:—

PERSONAL STATEMENT.

Before examining the Proposer the Medical Examiner should read over carefully the answers to the queries filled up by the Proposer to see that they are complete in every respect particularly as regards the exact cause of death, and the nature, approximate date and duration of last illness of members of the Proposer's family. Fuller information should be obtained such as will explain the me like FEVER, COUGH, INFLAMMATION OF LUNGS, C ACCIDENT, OLD AGE, GENERAL DEBILITY, NATURE

MEDICAL EXAMINER'S REPORT.

- Q. 2.—It is important that the height, weight and other measurements be carefully taken and noted by the Medical Examiner himself, as serious mistakes have been found to be possible otherwise, leading to a complete misapprehension of the nature of the risk. The weight must be taken on a weighing machine known to be in order.
- Q. 3 & 4.—Attention is particularly drawn to the special instructions given for a complete and satisfactory reply to these questions. In respect of all Proposals of Rs. 5,000 and upwards and of lives aged 50 and upwards as also where the Examiner detects or there is a past history of Albuminuria, Nephritis or Heart Disease, the Blood Pressure (Systolic and Diastolic) measured by a Sphygmomanometer should be carefully recorded.
- Q. 5 & 6.—It is essential that the parts be examined to ascertain as far as possible the correctness of the Proposer's statements as to Hernia, Venereal Diseases, Haemorrhoids, Hydrocele, etc. The approximate date and duration of all previous illnesses should be noted as far as possible.
- Q. 9 (b)—Particular attention is directed to the instructions given to assist towards a complete and satisfactory reply to this question. The urine should be examined, in all cases, by the Medical Examiner himself. If Albumen is found on the first examination, two further examinations should be made on each occasion after a large meal and the results recorded.

The action of the Board depends largely on the thoroughness of your examination, and the fullness of the details sent in by you.

GENERAL.

The examination should be carried out in daylight.

The Medical Examiner is requested to satisfy himself before making the examination that the proposal for assurance is actually completed. If the Proposer is illiterate, the Medical Examiner should also verify and attest the thumb mark of the Proposer on the proposal form. Under no circumstances should he examine his own relatives or his employees or his immediate colleagues in the service, senior or Junior, of any Proposer introduced by a relative who is an Agent.

The Medical Examiner is particularly requested to complete the Report fully in all respects to avoid any references and to state his appointment and qualifications in full as Medical Reports are not accepted from any but the Company's duly appointed Medical Examiners or in the absence of such, the Civil Surgeon of the station where the Proposer is to be examined.

The Medical Examiner is requested not to examine any female cases if he finds any evidence or has any suspicion of pregnancy, advising the Company as to this.

The Medical Examiner is requested not to examine a proposer who has been already examined by him or any other within the preceding six months under a previous proposal to this Company, unless specially requested to do so by the controlling office.

If the party is to be examined by two examiners, the second examiner should allow an interval of at least 3 hours to elapse after the first examination before proceeding with the second examination.

It is required that no Medical Examiner shall on any account remunerate directly or indirectly any Agent of the Company in any way and the Medical Examiner is requested to immediately report to the Head Office should he ever be asked for any such remuneration.

No information as to the Medical Examiner's opinion of the Life or the results of the examination must be communicated to the Proposer and the Report must be forwarded, sealed, direct to the Company at the following address:—

.....

APPENDIX C

.....19

A PROPOSAL has been made to this Company to effect an Assurance on the life of Mr.
 who refers to you as a Friend from whom information may be obtained respecting the general state of his health and habits of life.
 We therefore request you to answer the following questions and return this form to us at your earliest convenience. It is important
 for the proposer, that every circumstance connected with his health or habits should be communicated. All reports made to the
 Company are held strictly private and confidential.

To.....

.....

.....

ALL BLANKS ABOVE THIS LINE TO BE FILLED UP BY THE AGENT.

PRIVATE FRIEND'S REPORT.

1. (a)	Are you intimately acquainted with the said party ? ..	(a)
(b)	How long have you known him ? ..	(b)
(c)	Are you related to him ? ..	(c)
2. (a)	Do you see him frequently ? ..	(a)
(b)	When did you last see him ? ..	(b)
3. (a)	What is the usual state of his health ? ..	(a)
(b)	Is he now to the best of your knowledge in good health ? ..	(b)

Answers must be given in words. Strokes of the pen or dots or dashes cannot be accepted as replies.

4. (a)	Have you ever heard of his having suffered from any illness?	(a)
(b)	If so, when and what was its nature?	(b)
5. (a)	Are his habits and mode of living strictly regular and temperate?	(a)
(b)	Have they always been so?	(b)
(c)	If not, is he or has he at any time been addicted to the use of any stimulating, intoxicating or narcotic drug?	(c)
(d)	Has he, to your knowledge or by report, ever shown symptoms of delirium tremens or anything resembling it?	(d)
6. (a)	What is his exact age? If unable to give the same, what is his age approximately?	(a)
(b)	Does he look older than the age you have stated?	(b)
7.	Have any of his near relations to your knowledge died of or suffered from Consumption, Insanity or any hereditary disease? If so, give particulars	
8.	Do you consider his occupation and ordinary manner of living injurious to his health?	
9.	Do you know any reason why an Assurance on his life should be more than usually hazardous? If so, state it	
10.	Have you any personal or pecuniary interest in the proposal?	
11.	Can you conscientiously recommend the above as a safe life for Assurance?	

Dated at.....this.....day of.....19 ..

(Signature)
 (Designation)
 (Address)

APPENDIX D

WHEREAS THE LIFE ASSURANCE COMPANY, LIMITED, (hereinafter called "the Company"), has received a Proposal and Declaration for Assurance which Proposal and Declaration with the statements contained and referred to therein the Proposer named in the Schedule hereto has agreed shall be and are hereby declared to be the basis of this Assurance, and has received the first Premium for an Assurance of the amount and on the terms stated in the said Schedule.

Now this Policy Witnesseth that in consideration of the premises and on condition that there shall be duly paid to the Company the subsequent premiums as stipulated for in the said Schedule hereto the Company will pay at its Head Office the sum assured but without interest to the person or persons to whom the same is therein expressed to be payable upon proof to the satisfaction of the Directors of the Company of the happening of the event on which the sum assured is to become payable in terms of the said Schedule hereto the title of the person or persons claiming payment and the correctness of the age of the Life Assured stated in the Proposal if not previously admitted.

And it is hereby declared that this Policy of Assurance shall be subject to the Conditions and Privileges printed on the back hereof, and that the following Schedule and every endorsement placed on the Policy by the Company shall be deemed part of the Policy.

SCHEDULE

NAME & ADDRESS OF THE PROPOSER		AGENCY AGENTS' NAME AND NUMBER			
		<div style="border: 1px solid black; padding: 5px; display: inline-block;"> POLICY NUMBER AND SUM ASSURED </div>			
Occupation	PROPOSAL NUMBER AND DATE OF PROPOSAL	CLASS AND TERM OF ASSURANCE	NAME OF LIFE INSURED AND DATE OF PAYMENT OF SUM ASSURED	INSTALMENT OF PREMIUM	AGE AT ENTRY
	<div style="text-align: center;">PROFITS</div>				
NON-FORFEITURE SYSTEM APPLICABLE TO POLICY					
	DATE OF COMMENCEMENT OF POLICY	PREMIUM PAYING PERIOD		YEARS	
	DUE DATE OF PREMIUM	DATE OF FINAL PREMIUM SUM ASSURED WHEN PAYABLE			
NAME OF NOMINEE (UNDER THE INSURANCE ACT)					

INSURANCE

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Period during which premiums payable.	During the lifetime of the Life Assured from the Date of Commencement up to the Final Premium hereinafter mentioned.
Event on the happening of which Sum Assured payable.	On the Life Assured surviving the date on which the Sum Assured becomes payable or at his death if previous.
To whom Payable.	The Proprietor or his Assigns or Nominees or Proving Executors or Administrators or other Legal Representatives who should take out representation to his Estate or limited to the monies payable under this Policy from any Court of any Province of India or in case the monies payable under this Policy are made payable at any place in any Indian State or at any place outside India from any competent Court having jurisdiction of such place outside India where the monies due under this Policy are made payable.
In witness whereof these presents have, by order of the Board of Directors, been sealed with the Seal of the Company, stamped and signed on its behalf at Bombay, this day.	
Date.....	

Examined Manager

CONDITIONS AND PRIVILEGES WITHIN REFERRED TO

Proof of Age.—Without prejudice to the Company's other rights and remedies, including those under the Insurance Act, 1938, the premium and sum assured being calculated on the age of the Life Assured as stated in the said Schedule hereto the sum assured and bonus additions thereto, if any, shall, in case the age is found to be higher than the said age, be deemed to be and be such reduced amount as would have been secured for the correct age at entry by the said premium subject to an option to the Assured to be exercised during his lifetime before the expiry of the time for payment of the premium payable next after such finding of age, to secure the original sum assured and bonus, if any, by paying to the Company forthwith the accumulated difference between the premium for the correct age and the original premium from the commencement of this Policy up to such payment with interest on each instalment of such difference at 6 per cent. per annum and by paying thenceforth the premium for the correct age, and that if the correct age at entry is such as would have made the Life Assured uninsurable under the class or terms of assurance specified in the said Schedule hereto, the class or terms shall stand altered to such as are granted by the Company according to practice in force at the commencement of this Assurance.

Forfeiture in Certain Events.—In case the premiums shall not be duly paid as aforesaid or in case any condition herein contained or endorsed hereon shall be contravened, or in case it shall hereafter appear that any untrue or incorrect averment is contained in the Proposal and Declaration herein mentioned, or in the statements referred to therein, or that any of the matters set forth or referred to therein have not been truly and fairly stated, or that any material information has been withheld,

then and in every such case this Policy shall be void, and all claims to any benefit in virtue hereof shall cease and determine, and all moneys that have been paid in consequence hereof shall belong to the Company, excepting always in so far as relief is provided in terms of the Privileges herein contained or may be lawfully granted by the Directors of the Company.

Days of Grace.—One month but not less than 30 days of grace are allowed for payment of yearly, half-yearly or quarterly premiums, and 15 days for monthly premiums. If death occurs within that period and before payment of the premium then due, the Policy will still be valid, and the sum assured paid after deduction of the current year's premium.

Revival of Discontinued or Lapsed Policies.—When the premium is not paid within the days of grace, the policy lapses, but may be revived during the lifetime of the Life Assured on the following terms:—

(1) Within six months from the due date of the first unpaid premium without evidence of health on payment of the premiums in arrears with interest at the rate of 3 per cent. for each month or portion of a month, reckoning from the due date of each premium paid late, subject to a minimum payment on this account of 8 annas.

If revival is completed within fourteen days from the date of lapse a simple revival charge of 8 annas only will be required, no matter what the amount of the premium may be.

(2) At any time after the first six months from the due date of the first unpaid premium on production to the satisfaction of the Directors, of an approved Medical Report at the Life Assured's own expense, regarding his health and habits and of evidence to show that there has been no adverse change in Personal or Family History or Occupation and on payment of the premiums in arrears with interest thereon at the rate of 6 per cent. per annum compounding half-yearly reckoning from the due date of each premium paid late.

Arrangements will be made by the Company for Medical Examination by an appointed Examiner, the fee for which is required to be paid in advance.

Non-Forfeiture Regulations.—Only one out of the Non-forfeiture Systems 'A' and 'B' described below shall apply in the case of a Policy and what applies to this Policy is shown in the Schedule.

System 'A.'—If, after at least two full years' premiums have been paid in respect of this Policy, any subsequent premium be not duly paid, this Policy shall not be wholly void, but the Sum Assured by it shall be reduced to such a sum as shall bear the same ratio to the full Sum Assured as the number of premiums actually paid shall bear to the total number originally stipulated for in the Policy, provided such reduced sum together with any attached Bonus be not less than Rs. 100. The Policy so reduced shall thereafter be free from all liability for payment of the within-mentioned premium, but shall not be entitled to participate in future profits. If the Policy be on the With-Profit Scale, the existing vested Bonus additions, if any, will remain attached to the reduced Paid-up Policy.

N.B.—Notwithstanding what is above stated, if, after at least three full years' premiums have been paid in respect of this Policy, any subsequent premium be not duly paid, in the event of the death of the Life Assured within six months from the due date of the first unpaid Premium the Policy moneys will be paid as if the Policy had remained in full force under deduction of the premium or premiums unpaid with interest thereon to date of death on the same terms as for revival of the Policy during such period.

System 'B.'—Should payment of premiums be discontinued under this Policy after it has acquired a surrender value, the Company will automatically advance the premiums as they fall due and maintain the Policy in force so long as there is sufficient net surrender value (after deduction of any indebtedness to the Company with accrued interest) to cover these advances and interest thereon at 6 per cent. per annum compounding half-yearly. Such advance together with interest may be repaid either in whole or in part at any time while the Policy is so kept in force. In the event of the Policy becoming a claim during this period the claim will be entertained subject to deduction from the Policy moneys of the amount so advanced, together with interest thereon. If the surrender value is exhausted by reason of such advance and no repayment of the advance with interest is made before then, the Policy will lapse and all liability of the Company will terminate.

Guaranteed Surrender Value.—This Policy can be surrendered for cash after the premiums have been paid for at least two years or to the extent of one-tenth of the total number stipulated for in the Policy, provided such one-tenth exceeds one full year's premium.

The minimum Surrender Value allowable under this Policy is equal to 30 per cent of the total amount of the withinmentioned premiums paid excluding the premiums for the first year and all extra premiums that may have been paid on account of profession or occupation. If the Policy be on the With-Profit Scale the cash value of any existing vested Bonus Additions will also be allowed.

Loans.—These are granted for amounts within the Surrender Value of the Policy subject to production of satisfactory title. The only expense to the borrower is the Stamp Duty on the Loan Bond.

Travel, Residence and Occupation.—This Policy is free from all restrictions as to Travel, Residence and Occupation. Reduced Premiums for Residence in Europe, America or Japan.—If the Life Assured proceeds to Europe, America or Japan north of 33° North Latitude, the premium shall be temporarily reduced during residence there.

Assignments and Nominations.—Notice of assignment or nomination should be submitted for registration to the Head Office of the Company in Bombay. In registering an assignment or nomination the Company does not accept any responsibility or express any opinion as to its validity or legal effect.

Suicide.—In case the Life Assured shall within one year from the commencement of this Policy commit suicide, whether insane or not at the time, the liability of the Company shall be limited to the extent of the benefit interest which any person (other than the life Assured) shall prove to the satisfaction of the Directors to have been acquired in the Policy *bona fide* and for valuable consideration of which notice in writing shall at least one calendar month previous to death have been given to the Company at its Head Office in Bombay and save and except to that extent this Policy shall be void and all claims to any benefit, advantage or interest in the funds of the Company by virtue of this Policy shall cease and determine.

Claim.—The amount due under this Policy is payable at the Head Office of the Company in Bombay but the Company is at liberty at its absolute discretion to fix, at any time before or after the Policy has become a claim, any alternative place of payment. When the premium is payable half-yearly, quarterly, or monthly and death takes place before all the premiums have fallen due for the Policy year then current, the unpaid premium falling due before the next anniversary of the Policy shall be deducted from the sum assured at settlement.

Qualifications of Policyholders' Directors.—(1) Only and all persons holding otherwise than as assignees one or more policies of life insurance issued by the Company and insuring a total sum, including any bonuses that may have attached to them before the date of election, of not less than Rs. 3,000 or annuities on human life of a total amount of not less than Rs. 250 per annum such policies to have been in force for not less than three years, are eligible for election as Policyholders' Directors unless disqualified under (2) below. The assignment of a Policy to the person who took out the Policy will not disqualify that person for being eligible for election as a Policyholders' Director.

(2) A person is ineligible for election as a Policyholders' Director of the Company if he is a Director, Officer, Employee, or legal or Technical Adviser of the Company or of any other Insurer. No Insurance Agent who solicits or procures life insurance business, and no person acting on behalf of an Insurer who for the purpose of life insurance business employs Insurance, Agents, shall be eligible to be a Director of the Company. A person who is a Policyholders' Director and is not otherwise disqualified is eligible for re-election.

PART THREE
MARINE INSURANCE

Origin

Marine insurance is the oldest form of insurance of which there is any record. When, where and by whom it was first devised is still a matter of research in the field of commercial history. However, the fact remains that early in the development of commercial intercourse the need of distributing the marine losses warranted the formulation of some equitable scheme and the present system was the outcome of it.

In the days of yore, when the means of transport and communication were very primitive, the risks attached to sea-borne trade were large in number and huge in magnitude. It often used to happen that if a ship leaving the shores of a certain country was not heard of for a very long time, it was taken to be lost and the owner had to suffer the value of the ship and the cargo it contained. Maritime traders, therefore, devised a scheme of insurance to distribute such losses amongst all of them who were engaged in similar trade, so that the loss could be made bearable by its distribution over a large number of persons. With the development in the means of transport and communication the international trade also developed and the marine insurance like the other branches of commerce passed into the hands of experts who have an up-to-date knowledge of the various ships and the sea routes.

Lombards

It can safely be said that marine insurance has been practised for over 700 years. In England, the

marine insurance was first practised by Lombards, who, driven out of their homes in Italy about the middle of the 13th century, settled in various parts of Europe, many of them finding refuge in England. These Lombards being persecuted by the public, settled down in a part of the city of London, which became known as Lombard Street. This street has become famous in marine insurance history. With the approach of England's commercial awakening, the Lombards' power declined and by the end of 16th century, their grip over the marine field was lost.

Lloyd's

Prior to 1666, the underwriting was done by individuals only in their own private offices but the introduction of the use of coffee, and with it the establishment in London of coffee houses, had a marked effect on the course of marine insurance in England. Some of these houses became the common meeting places for merchants and mariners who, over the fragrant cups of coffee, would discuss the latest marine news. One of these houses belonged to Mr. Edward Lloyd, who began to publish for his customers in 1696, a paper called *Lloyd's News* dealing largely with commercial and shipping interests. Later on he published a paper named *Lloyd's List*, which reported the movements of vessels in various parts of Europe and also the various rates of exchange. Gradually Edward Lloyd's coffee house became the meeting place of many of London's underwriters who underwrote their risks here and ultimately it became the centre for the transaction of marine insurance business.

In 1774, the members of Lloyd's laid the foundation of the system of membership which still prevails today. In 1779, they fixed the definite form of policy which has remained the basis of various forms attempted till now. Many attempts were made to float new companies to conduct marine insurance business but very few ones survived and most of the business is still in the hands of Lloyd's even to this day.

THE CONTRACT OF MARINE INSURANCE

Parties to the Contract

In case of inland trade, where the goods are sent from one place to another, the common carrier is responsible to deliver the goods to the destination, and if any loss takes place during the transit, the carrier must make it good. This is not possible in overseas trade because there the risks are of a more serious nature and it is not in the power of the carrier to avoid them. The carrier will undertake the liability for some of the risks only which are mentioned in the Contract of Affreightment, which may be either a Bill of Lading or a Charter Party. The rest of the risks will not be assumed by the carrier and the property-owner can get them insured with any marine insurance company. Such risks are the risks arising on account of an Act of God or king's enemies, arrests and restraints by rulers, princes and people, fire, gales, etc. This type of insurance taken on the goods is called *cargo insurance* and the assured, who is the cargo owner is called the shipper.

Not only the cargo carried by a ship is subject to the above mentioned marine risks but the ship itself is exposed to the same perils and the shipowner can take an insurance on it as well. In this case, the shipowner is the assured and the insurance is called *hull insurance*.

When the ship is lost on account of any of the marine perils, the cargo owner will suffer the loss of his cargo and the shipowner will suffer the loss of his ship but there is still a third sufferer. It is the freight receiver. The freight may be paid either in advance or on the arrival of the ship at the port of destination. In the former case, the loser will be the cargo owner who may add the freight to the value of the cargo while taking the insurance; in the latter

case, the shipping company will lose the freight as the goods could not be safely delivered to the destination port and, therefore, it can take a marine insurance policy on this freight. Such an insurance is called *freight insurance*.

Thus the subject-matter of marine insurance may be either cargo, or hull, or freight.

Effecting Marine Insurance

When a person wants to take a marine insurance policy, he may approach the insurer either directly or through a broker. It is always better to employ a broker on account of his specialized knowledge in insurance matters. If the insurance is to be effected with Lloyd's underwriters, the employment of an authorized broker is imperative as the assured is prohibited to enter the Room.

Upon receipt of the instructions from the proponent, the broker will prepare a *slip* on which will be mentioned all the material information regarding the risk and the conditions and clauses defining the liabilities to be assumed. The broker will then approach the individual underwriters who will signify their acceptance of the insurance by initialling the slip and indicating the sum they are prepared to accept on behalf of their syndicate or company and the contract will be concluded from the moment they have signed, but this date does not determine the commencement of the insurance or of underwriter's liability. A time policy will come in force on the agreed date, while a voyage policy shall come in force when the ship sails or when the cargo is loaded.

After the slip has been signed, the underwriter will ask the broker or the assured to supply definite instructions regarding certain details which might have been of provisional character on the slip, so that after their receipt a final policy may be issued. These instructions are to be given on a form, which is called *closing slip*. It contains the details regarding value,

quantity, marks, etc., which, possibly, were left indefinite when the original slip was prepared. During this interval between receiving the closing slip and signing the original slip, the risk is said to have remained open, and as soon as the closing slip is received by the underwriter, the risk is said to be closed, and the final policy will be issued at once thereafter.

A contract of marine insurance is not valid or enforceable in the law courts unless it be embodied in a duly stamped policy. Therefore, the assured cannot legally make any claim over the underwriter, if the loss arises before a final policy is issued. The slip is not legally binding on the underwriters, but, such is the high standard of integrity of them that they invariably pay the claims arising out of the contract. In practice no underwriter would take advantage of his legal position to decline the payment of claims arising out of an insurance he has underwritten.

The Contract

In India, there is no statute which lays down rules as regards the formation of contracts of marine insurance. Here the insurance contracts are governed by the Indian Contract Act and the Indian Stamp Act. In England, the Marine Insurance Act was passed in 1906 and which governs all the marine insurance contracts there. In India, for ascertaining the principles and rules of marine insurance, recourse must be had to the decided cases of this country as well as those of England.

The above Act defines the contract like this: "A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure." Thus the marine insurance is a contract between the 'assured' on the one hand who may be either cargo-owner or ship-owner or freight-receiver, and the 'insurer' on the other hand who is

also called the 'underwriter.' The assured pays a certain sum which is called the 'premium' and the insurer in exchange for it agrees to indemnify the assured against loss or damage caused by certain specified perils known as 'maritime perils.'

The term 'maritime perils' is not used in a narrow sense. The definition includes the 'losses incident to marine adventure.' The word marine includes not only the "ocean-marine" but also the "inland marine." Marine contracts are now commonly written to protect merchandise while in transit and include the perils of both land and water conveyances from the warehouse at the point of origin to the warehouse at the point of destination.

The document containing the terms of the contract is called the "Policy" and it should always be borne in mind that the policy insures the person or persons interested in the subject-matter and not the subject-matter itself. The policy undertakes to indemnify the insured for damage arising out of the loss or damage of subject-matter insured, but does not guarantee its continued existence or replacement.

Fundamental Principles

As stated above, the marine insurance contracts are governed by the Indian Contract Act and, therefore, should possess all the essentials of an ordinary contract. In addition, the following principles should be observed more closely as they have grown out of long practice relating to marine insurance and form the very basis of a valid contract.

Good Faith

A contract of marine insurance is a contract based upon the utmost good faith, and, if this is not observed by either of the parties, the contract can be avoided by the other party. An underwriter is often asked to insure a ship or a cargo, thousands of miles away, without any opportunity of making an inspection of the risk. In such cases, he must rely absolutely

on the statements made by the assured. Therefore, the assured is under a duty to disclose every material circumstance within his knowledge which would affect the mind of a prudent underwriter in fixing the premium or undertaking the risk. In the words of Lord Mansfield, "The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. The keeping back such circumstance is a fraud, and therefore the policy is void. Although the suppression should happen through mistake without any fraudulent intention, yet still the underwriter has been deceived, and the policy is void because the risk run is really different from the risk understood and intended to be run at the time of the agreement. The policy would equally be void against the underwriter if he concealed anything within his own knowledge as, for example, if he insured a ship on a voyage, and he privately knew that she had already arrived, and in such circumstances he would be liable to return the premium paid. Good faith forbids either party, by concealing what he privately knows, to draw the other party into a bargain owing to his ignorance of that fact, and his believing the contrary."¹

Thus it is clear that the duty to disclose the material facts lies both on the assured as well as the insurer. Where the insurance is effected by a broker, the broker, as the agent of the assured, must not merely make a full disclosure of all the material facts communicated to him by the assured, but must also supplement this information with his special knowledge of any material facts regarding the proposed

insurance. The examples of material facts are that the vessel is overdue or is damaged or is lost, etc.

However, in the absence of any enquiry the assured is not bound to disclose the following facts: (1) Any circumstance which diminishes the risk; (2) any circumstance which is known or presumed to be known to the insurer, e.g., the underwriter is presumed to be acquainted with trade usages, the routes followed, methods of loading, discharge, stowage and packing of cargoes, etc.; (3) any circumstance as to which information is waived by the insurer; (4) any circumstance which it is superfluous to disclose by reason of any express or implied warranty, because all warranties must be strictly complied with, and if they are not so complied with, the insurance is void.

Insurable Interest

No person can become a party to a marine insurance contract unless he has an insurable interest in the subject-matter insured. A person is said to have an insurable interest "where he stands in any legal or equitable relation to the marine adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by detention thereof, or may incur liability in respect thereof." From this definition it is clear that a person cannot legally take out insurance on certain property for his own benefit, merely because such property is subject to marine perils. A policy taken out by a person who has no such interest is void at law and is called a wagering contract.

As the insurances are frequently effected before the commercial transactions to which they relate are formally completed, it is not necessary that the assured must have an insurable interest when the contract is made, though he should have an expectation of acquiring such an interest at a future date. There-

fore it is sufficient that he has an insurable interest at the time of loss and this will entitle him to indemnification. As the rights of ownership and the other interests in the subject-matter of insurance often change hands whilst the goods are in transit, the requirement of the insurable interest to be present only at the time of loss makes a marine insurance policy freely assignable.

The following persons have been held to have insurable interest:—

- (1) A cargo-owner has it in his cargo.
- (2) A ship-owner has it in his ship.
- (3) A shipping company has it in the freight to be received when the goods reach the port of destination.
- (4) An insurer has it in respect of risks underwritten by him for the purposes of reinsurance.
- (5) The master or any member of the crew of a ship has it in respect of his wages.
- (6) The lender of money on bottomry or respondentia has it in respect of the loan.
- (7) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

Implied Warranties

In addition to the above two requirements, the implied warranties must also be complied with to render a contract completely valid. In marine insurance, a 'warranty' means, a term the breach of which entitles the insurers to avoid the policy altogether. A warranty may be (a) 'express' or (b) 'implied'. An express warranty is one which is actually expressed in the policy or incorporated therein by reference, whereas the implied warranties do not appear in the

policy at all but are tacitly understood by the parties to be present and are as fully binding as express warranties. The examples of express warranties are that the vessel is safe on a particular day, that ship will sail with convoy, that the ship is neutral, etc. The implied warranties are the 'seaworthiness' and the 'legality of venture.' All the warranties must be literally complied with, as otherwise the underwriter may avoid all liability as from the date of the breach. However, there are two exceptions to this rule when a breach of warranty does not affect the underwriter's liability. They are:—(i) where owing to a change of circumstances the warranty is no longer applicable, and (ii) where compliance would be unlawful owing to the enactment of a subsequent law.

Seaworthiness

The most important of the implied warranties is that of seaworthiness. In order that this may be complied with, it is necessary that the vessel, at the commencement of the voyage, or if the voyage is carried out in stages, at the commencement of each stage, must be seaworthy. A vessel is said to be seaworthy when it is suitably constructed, properly equipped, officered and manned, sufficiently fuelled and provisioned, documented and capable of withstanding the ordinary strain and stress of the voyage contemplated. It should be understood that seaworthiness is a relative term and the ship need only be seaworthy for the purpose of the particular voyage insured. The seaworthiness must be judged in the context of the route of the voyage and the cargo to be carried. Seaworthiness embraces not merely the condition of the ship generally, but includes suitability and the adequacy of her equipment, the sufficiency and competency of her officers and crew, and what has been described as "cargoworthiness". That is, in a cargo policy, the warranty means the ship must be reasonably fit and suitable to carry the kind of cargo insured. It has been felt by some writers that the term

seaworthiness does not convey all that is implied by it and they suggest that "fitness" would be a better term.

However, the standard to judge the seaworthiness is not fixed and may vary with any particular vessel at different periods of the same voyage. A ship may be perfectly seaworthy to load and carry a cargo while lying in a sheltered port, but having reached the open sea it may be completely unseaworthy for the rest of the proposed voyage. There is a different standard for every ocean, and the same standard of seaworthiness will not apply to different parts of a particular ocean or at different times in the same part of the ocean. A ship seaworthy for Atlantic Coastal trade may be absolutely unseaworthy for trans-Atlantic voyage. So, too, a ship suitable for a summer voyage may be an unseaworthy risk in the winter season. Again a ship suitable to carry machinery may be unseaworthy to carry fish on the same route and in the same season. Thus it must be observed that the ship should be seaworthy at the port of commencement (or at the subsequent ports if the voyage is divisible) in the light of the cargo it has to carry and the voyage upon which it is about to enter. The risk being commenced, and the ship being seaworthy, the happening of some fortuitous event rendering the vessel unseaworthy, will in no wise void the contract.

If goods are shipped by vessels which are proved to be unseaworthy, the contract is voidable at the instance of the underwriter and nothing can be legally realised from him. However, the onus of proof of unseaworthiness lies in all cases upon the insurers. It will be seen that the ship belongs to the shipowner and the shipper has as a matter of fact no control over the seaworthiness or otherwise of the ship and therefore it is impracticable in modern shipping and overseas trade to expect the innocent cargo-owner to warrant the seaworthiness of the ship, or at any rate to avoid

his policy if after the loss her unseaworthiness is proved. In order to avoid this hardship to the cargo-owner, the underwriters now embody a Seaworthiness Admitted Clause in all cargo policies, by which, as between the cargo-owner and the insurer, the seaworthiness of the ship is admitted, and would not be raised as a defence to any claim for loss by insured perils.

Legality

The second implied warranty in marine insurance is concerned with the question of legality. To comply with this warranty, the adventure must be lawful and, so far as it is within the control of the insured, carried out in a lawful manner. Obviously, marine insurance policies cannot be employed to protect illegal voyages or ventures and such contracts are void. The assured can have no right to claim a loss if the venture was illegal. Cases of illegal ventures include trading with an enemy, violating neutrality laws, smuggling, breach of a blockade, and other similar ventures prohibited by law.

Insurance which involves the illegal conduct of the assured or of the underwriter must not be confused with insurance against the illegal conduct of third parties, as in the case of barratry, theft, pirates or rovers. The insurance of the latter type is valid. The warranty of legality differs from the warranty of seaworthiness, in that the parties cannot mutually agree to waive this warranty. The waiver of the implied warranty of legality is against public policy and so cannot be allowed.

Indemnity

The marine insurance contract is a contract of indemnity and the insurer binds himself to indemnify the assured for loss or damage resulting from specified perils, to which the insured property is exposed in a stated maritime adventure. The basis of indemnity is always a cash basis as underwriters cannot

undertake to replace the lost ships and cargoes and, therefore, the basis of indemnification is the value of the subject-matter. This value may be either the *insured* or the *insurable* value. If at the time of taking a policy the value is agreed it is called the *insured value* and is regarded as sacrosanct and binding on both parties to the contract as representing the value of the subject-matter insured. When a loss arises, the indemnity will be measured in the proportion that the assured sum bears to the insured value. In fixing the insured value of the goods, the assured is generally allowed to add anticipated profits so that in case of any loss he can recover in the claim the loss of proportionate profits as well.

Where the value of the goods has not been fixed in the beginning but is left to be determined at the time of loss, the measure of indemnity will be based on the *insurable value* of the goods and its relation to the sum assured. However, it is in the interest of the assured as well as the insurer to have the insured value, as no coverage on account of profits is allowed in estimating the insurable value. Again if the insurable value happens to be more than the assured sum, the assured would be ratably uninsured in respect of all claims. On the other hand, if it is lower than the assured sum, the underwriter would be liable for a return of premium on the difference. On account of this difficulty all branches of shipping and overseas trade prefer the facility of policies with insured value.

Thus it will be seen that a marine insurance contract involves a departure from the principle of pure indemnity as the reasonable anticipated profits are also allowed to be covered by including them in the value of the goods when it is insured value. It has now become the common practice to issue such policies and there should be no objection to it as well when the underwriter and the assured have mutually agreed that such value shall be insured.

CHAPTER XIV

TYPES OF MARINE INSURANCE POLICIES

Marine policies, though commonly in one form, are of different kinds because of the wide variety of interests to be covered and the needs of different classes of marine adventures. Fundamentally, they have much in common. It is necessary, however, to realise some of the more important differences and the needs for which the various forms have been made out.

Time Policies

Where the contract is to insure the subject-matter for a specific period of time, e.g., from noon 1st January 1948 to noon 1st January 1949, the policy is called a *Time Policy*. In England, time policies for longer than one year are invalid but they can be taken for any shorter period. This kind of insurance is generally more suitable for hull insurance because the ship-owners find it convenient to insure their vessels for a specific period, instead of doing so voyage by voyage. Sometimes time policies are also taken for goods and other movables when a multitude of small amounts are involved, the total of which might remain stable every year.

Voyage Policies

A 'voyage' policy in contradistinction to a 'time' policy, is one in which the contract is to insure the subject-matter at and from or from one place to another or others. Here the subject-matter is insured for a particular voyage, the limits of the risk being defined by places, e.g., Bombay to Liverpool; or New York to Karachi. Cargoes, because they are in danger of destruction from sea perils during the period of transportation only, are usually insured under the voyage form. A voyage policy is not suitable for hull insurance as a ship usually does not operate over a particular route only.

However, a policy can be issued which may include both voyage and time elements in it, e.g., a ship may be insured sailing between New York and Shanghai for a year. Such a policy is called a *Time and Voyage* policy or *mixed* policy and is generally issued for steamers operating over a particular route.

Floating Policies

A floating policy is one which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration. The declarations must be made in order of despatch or shipment. Here the insured takes a policy for a round sum, and whenever he despatches shipments, he will make a declaration to the underwriter, who will reduce the sum available by the amount of shipment. The policy remains "open" for the balance and, therefore, it is also called "open" or "declaration" policy. With each declaration the amount will be reduced till it is exhausted when the insured sum is said to be "closed" and the policy is said to have been "fully declared" or "run off".

The floating policy is suitable for a cargo-owner who makes regular shipments of cargoes, within a designated geographical area. All his shipments are automatically covered as soon as made, whether known to the insured or not, provided that the declarations are duly and properly made as soon as possible. It is not open to the insured to omit to send in declarations for shipments which he knows have safely arrived; if this is done it is a distinct breach of the contract and will render the policy void. The premium is calculated upon the amounts at risk as determined from the declarations made.

Blanket Policies

Like floating policies, the blanket policies are also taken to cover losses within the geographical and

time limits. Here the insurance is taken for a certain amount but the premium is paid on the whole of it in the beginning of the policy and is readjusted at the end of the policy term in accordance with the actual amounts at risk, as shown by the records of the insured. If the shipments are made for an amount greater than the insured sum, the additional premium at a fixed rate is charged over the excess protection, on the other hand if the actual coverage comes out to be less than that estimated, a return of premium is made at a fixed rate on the balance. The blanket policies are more common in America.

Named Policies

In floating policies, as was noted above, the name of the ship is not mentioned when the policy is taken but is declared afterwards when the shipment is made. In contradistinction with this class, there are policies where the name of the vessel, by which shipment is made, is mentioned and the interest is specified, e.g., "1,000 bales of cotton per Bay of Bengal S.S. from Calcutta to London." Such policies are called *Named Policies*.

Single Vessel and Fleet Policies

When an owner of the vessels insures his individual vessels separately, it is called *Single vessel policy*. With the advent of steamships and the development of large companies, now many vessels are owned by an individual corporation or company. Such a company can insure a fleet of steamers under one policy, which is called *Fleet insurance policy*. The advantage of this policy lies in the fact that less desirable and older vessels are also insured at an average rate.

Valued Policies

A valued policy is one in which the value of the subject-matter is agreed between the underwriters and the assured at the time of taking the insurance and

is inserted in the policy itself. The value which is agreed is called the *insured value* and forms the measure of indemnity in time of loss. The insured value is not necessarily the actual value, and it is agreed upon in the following manner:—

- (1) Invoice cost of the goods, and
- (2) Freight, shipping charges, insurance, etc., and
- (3) 10 per cent. margin to cover anticipated profits and other incidental expenses.

Most of the policies are valued policies.

Unvalued Policies

A policy, which does not specify the value of the subject-matter insured but leaves the value to be subsequently ascertained when the loss takes place, is called an *unvalued policy*. The value thus left to be decided later on, is called the *insurable value* and will form the basis for the measure of indemnity when the loss arises. In ascertaining the insurable value, only the invoice cost and the freight, shipping and insurance charges are included, no margin for anticipated profits being allowed to be added. Unvalued policies are seldom issued these days.

Block Policies

It has already been observed that marine insurance policies are issued to cover incidental inland risks also. Cotton is insured under marine contracts during processing in compresses, while being shipped by land by either trucks or railroads, and on steamers until delivered abroad at point of destination. A special type of this form is sometimes used in connection with the insurance of gold in South Africa. The interest is covered from the time of collection in mines, through the refineries, and then to the port of shipment and finally reaching the port of destination. Such a policy is called *Block policy*.

Currency Policies

A policy issued in foreign currency is called *currency policy*. In such a policy the sum insured and the value are stated in foreign currency, e.g., dollars, francs, yens, etc. A policy is usually taken for one year and during this period the currencies of different countries may fluctuate violently, under such circumstances the insured may not feel certain as to what will be the actual amount of claim. In order to avoid this uncertainty, the underwriters are prepared to issue policies in any currency and when the loss takes place the claim will be paid in the same currency irrespective of any rise or fall. Of course, the premium is also charged in the same currency.

Wagering Policies

While discussing the insurable interest it was observed that any policy to be valid must have insurable interest. Such policies are called *interest policies*. Thus all policies which can be legally enforced are interest policies. In contradistinction to this class, the policies which do not have any insurable interest are void and nothing but a gambling contract. Such policies are termed as *wagering policies* and cannot be enforced in law courts. It does not mean that such policies are not issued. The underwriters are willing to issue policies without insurable interest and pay the claims whenever they arise. Though no legal action can be taken against an underwriter if he refused to pay the loss on such a policy, but to maintain his honour and prestige he invariably makes the payment. Hence such policies are also called *Honour policies*. The most important form of the wager policies is the *P. P. I. (Policy Proof of Interest)* policy which indicates that no insurable interest is required to establish a claim under the policy. It is also indicated by the words *interest or no interest* which means that insurable interest may or may not exist to establish the claims. The P.P.I. policies include a

clause stating that in the event of claim the underwriters will dispense with proof of insurable interest and the policy itself will be a sufficient proof of interest. Generally, the P.P.I. policies are issued to protect such persons who have insurable interest but it is difficult to substantiate it. The English Marine Insurance Act 1906 draws no distinction between ordinary policies where the assured definitely has no insurable interest and policies which merely dispensed with proof of insurable interest, deeming both kinds gaming or wagering contracts and therefore equally void at law. To strengthen this point, the Marine Insurance Act 1909 went still further by imposing fine or imprisonment on persons taking P.P.I. or policies without insurable interest.

CHAPTER XV

THE POLICY AND ITS PHRASEOLOGY

The Policy

If the risk has been placed with Lloyd's underwriters, the broker will prepare one Lloyd's form of policy and after getting it duly signed, stamped and sealed will send it to the assured. When the risk is underwritten with different companies, each company will issue its own policy for the insurance it has accepted. The policy embodies all the terms and clauses of the contract and must specify the following:—

- (1) The name of the assured, or of some person who effects the insurance on his behalf:
- (2) The subject-matter insured and the risk insured against:
- (3) The voyage, or period of time, or both, as the case may be, covered by the insurance:

(4) The sum or sums insured:

(5) The name or names of the insurers.

Form of Policy

Speaking theoretically, an underwriter is free to issue a policy of any form which contains all the details of the terms of the contract but in practice it is not possible. Most of the companies issue policies of the standard form only. This standard form has a long history and has been in use in England since 1523, and the Lloyds adopted it in 1779. The English Marine Act of 1906 also recognised this form. This form had been much criticised on account of its quaint and archaic phraseology and many of the perils, which it included, do not exist now at all due to improved means of transport and certain new risks have sprung up which are not covered by it. In spite of all this the form still continues, though slight modifications have been made in order to provide for the above changes. The main reason for the continuance of the old policy form is that numerous legal decisions during the past 300 years have determined with certainty the meaning of its ancient forms and clauses and it is improbable that a better alternative form could be drafted to suit the great variety of insurances effected in the marine market. The standard form of the policy is given on the next page.

As the standard form is adopted for all kinds of insurances, the meaning of its terms and clauses should be clearly understood while constructing a particular policy. The policy must be constructed according to its plain, ordinary and popular sense, but if there is any doubt as to the intentions of the contracting parties, evidence of usage or custom may be admitted but such evidence cannot contradict what is clearly stated in the policy.

Lloyd's Form of Policy

BE IT KNOWN THAT...as well in own name as
for and in the name and names of all and every

other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause

and them, and every of them, to be insured lost or not lost, at and from

upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the

whereof is master under God, for this present voyage,

or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called, beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship,

upon the said ship, &c.

and so shall continue and endure, during her abode there, upon the said ship, &c. And further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandises whatsoever shall be arrived at

upon the said ship, &c., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, &c., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever

without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in his policy, are and shall be valued at

TOUCHING the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men-of-war, fire, enemies,

pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes and people, of what nation, condition, or quality soever, barratry of the master and mariners and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, &c., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London.

And so we, the assurers, are contented and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

IN WITNESS whereof we, the assurers, have subscribed our names and sums assured in LONDON.

N.B.—Corn, Fish, Salt, Fruit, Flour, and Seed are warranted free from average, unless general, or the ship be stranded—Sugar, Tobacco, Hemp, Flax, Hides and Skins are warranted free from Average, under Five Pounds per cent; and all other Goods, also the Ship and Freight, are warranted free from Average under Three Pounds per cent, unless general, or the Ship be stranded.

Opening words of the Policy

A marine insurance policy generally begins with the words—

“Be it known that.....” In some policies, the opening words are “In the name of God, Amen.” The meaning of these opening words is the same and has no special significance except the formal declaration of the policy.

Name of the Assured

The above opening words are followed by a blank space, which is intended for the insertion of the name of the insured or his agent. The document will not constitute a marine policy unless the name is inserted. If the insured persons happen to be more than one, the names of all of them or of their agents should be written, as the case may be. It should be clearly borne in mind that the names of only such persons will be valid who have an insurable interest in the subject-matter insured.

Assignment Clause

Just after the name of the assured or his agent, the standard form continues as follows:—

“.....as well as in his/their own name as for and in the name and names of all and every other person or persons to whom the same doth, may or shall appertain, in part or in all doth make assurance and cause.....and them, and every of them, to be insured.....”

These words provide that the policy can be assigned in favour of other persons to whom the interest or ownership in the subject-matter insured may be transferred at a later date. Irrespective of these words, a marine insurance policy is assignable unless assignment is expressly forbidden by the terms of the contract. The very fact, that in a marine insurance con-

tract the insurable interest must exist only when the loss takes place, allows for the free assignment of a marine policy. The policy is usually assigned by the method of endorsement and delivery. The importance of the assignment of a marine policy can be realised from the fact that the cargoes on ship change ownership several times before they reach the port of destination, and, therefore, the insurance also must be allowed to be transferred to the owner concerned.

The wordings of this clause provide not only for the assignment of the policy, but they also enable a person, for whom insurance has been taken in good faith by another person, to ratify or adopt the contract even after he knows that a loss has already taken place.

Lost or not Lost

The next wordings of the policy run as follows:—

... ..to be insured, lost or not lost.

The meaning of the words "Lost or not Lost" is that the insurer insures the goods irrespective of the fact whether they are already lost or not lost before the issue of the policy. Sometimes it may happen that a merchant receives information of the shipment of his cargo very late after the sailing of the steamer and, therefore, when he submits the risk to the underwriter and effects insurance it is not known whether the subject-matter to be insured is lost or safe on this date. Hence to provide him with full protection for such shipments, the words "Lost or not Lost" are inserted which mean that the underwriter undertakes to indemnify the insured whether the subject-matter before the date of issue of the policy is already lost or not. Thus the introduction of these words has a retrospective effect to provide for any loss which might have occurred during the period between the date of shipment and the date of issue of the policy.

It should be noted that the above clause is effective only where both the insurer and the insured observe complete good faith and have no knowledge of the safety or loss of the subject-matter at the time of issue of the policy. If either the insurer knows that the goods have reached the port of destination safely or the assured knows that the goods have already been destroyed, one must disclose the full information within his knowledge to another, otherwise the policy will be void and no advantage can be taken of the 'lost or not lost' clause by the defaulting party.

This clause reminds us of the time when news travelled slowly, steamers were unknown, and the other means of communication were less rapid. Naturally the insured and the insurer were quite in the dark about the loss or otherwise of the subject-matter and hence this clause was of much value. But in modern times with the invention of rapid means of communication such position is unconceivable and hence the clause has lost much of its significance.

CHAPTER XVI

THE POLICY AND ITS PHRASEOLOGY (Contd.) THE VOYAGE

At and From

This clause relates to the description of the voyage. In case of voyage policies, the subject-matter is insured regarding a particular voyage. As to from which time the risk exactly commences in a particular voyage will be determined by the 'at and from' clause. It means that the policy covers the subject-matter while it is lying *at* the port of departure *and from* the time the ship sails. This 'at and from' clause generally relates to hull and freight insurance.

Sometimes a policy contains not the words 'at and from' but only 'from', in that case it means that the risk is covered only from the time of departure and not previous to that, e.g., if a policy contains 'at and from Calcutta' it means that the underwriter is responsible for any loss arising either when the ship is staying at the port of Calcutta or at any time after it has left Calcutta; on the other hand, if the policy contains the words 'from Calcutta' it means that the underwriter is liable for any loss arising after the ship has sailed from the port of Calcutta and not before it.

In case of goods, the risk commences from the time they are loaded on the vessel; the wordings of the policy in this connection run as follows:—

"Beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship....."

It should be noted that the above clause does not include preliminary risks in lighters, rafts, etc., and the underwriter will not be responsible for any loss arising in the process of loading the cargo from the shore to the ship. However, this risk can be covered by the inclusion of the "craft, etc., clause."

Termination of Risk

Ordinarily the insurance ceases on the discharge and safe landing of goods. The wordings of the policy in this relation are as follows:—

"And upon the goods and merchandises until the same be there discharged and safely landed."

If the customary manner of discharge at a particular port is by means of lighters or other small craft, the underwriter's liability continues. If it is not customary, the risk involved in the process of discharge can be covered by inclusion of "craft, etc., clause."

When the ship reaches the port of destination, the goods must be landed within a reasonable time, and if they are not so landed the risk ceases.

"The risks covered by this policy attach from the time the goods leave the Warehouse and are stored at the place named in the policy for the commencement of the transit and continue during the entire course of transit, including customary transshipment if any, until the goods are discharged on board from the overseas vessel at the final port. The risks covered are continued whilst the goods are in transit and/or awaiting transit until delivery to the final warehouse at the destination named in the policy or until the expiry of 15 days (whether or not the destination to which the goods are insured is outside the limits of the port) whichever shall first occur. The time limits referred to above to be reckoned from mid-night of the day on which the discharge overseas of the goods hereby insured from the overseas vessel is completed. Transshipment, if any, other than as above, and/or delay in excess of the above time limits arising from circumstances beyond

the control of the assured, held covered at a premium to be arranged."

Change of Voyage

When a marine insurance policy is taken, great care should be exercised in describing the voyage which the vessel will undertake. It is of paramount importance that the voyage should be accurately described, and, further more, that it should be properly performed. The ship must actually sail from the specified port of departure and for the specified port of destination, otherwise the risk does not attach. When the ship sails from the port of departure for the contemplated voyage, the risk attaches under the policy and if after this the destination of the ship is voluntarily changed from the destination contemplated by the policy it is said to be a 'Change of Voyage.' The effect of a 'change of voyage' is to discharge the underwriter from liability as from the time when the determination to change is manifested. It is immaterial that the ship may not have left the course of voyage contemplated by the policy when the loss takes place. The position is the same when the voyage is 'abandoned', i.e., the ship, having started with the intention of sailing to the contemplated destination returns to the port of departure without any justifying cause. It is immaterial whether the risk be increased or decreased by a change or abandonment of voyage. The underwriter's liability comes to an end, the moment the decision for change or abandonment of voyage is arrived at. Similarly, if the ship sails from any port other than that specified in the policy or if it sails from the specified port of departure but for any destination other than that specified in the policy, the risk does not attach at all.

Delay

Again it is necessary that the voyage should be commenced and completed within a reasonable time, otherwise the underwriter will not be responsible.

Deviation

When the particular course of a voyage is described in the insurance policy, it must be followed or where no such course is designated, the usual or customary course must be followed. A departure from the specified course or in its absence from the usual or customary course amounts to deviation. When the deviation takes place without any lawful excuse, the underwriter is discharged from the liability from the time the deviation takes place.

A 'deviation' can be distinguished from a 'change of voyage' in so far as in the latter the port of destination agreed upon is changed, while in the former case the destination is the same as agreed, but the course thereto is deviated from. In the case of change of voyage, the underwriter's liability comes to an

the control of the assured, held covered at a premium to be arranged."

Change of Voyage

When a marine insurance policy is taken, great care should be exercised in describing the voyage which the vessel will undertake. It is of paramount importance that the voyage should be accurately described, and, further more, that it should be properly performed. The ship must actually sail from the specified port of departure and for the specified port of destination, otherwise the risk does not attach. When the ship sails from the port of departure for the contemplated voyage, the risk attaches under the policy and if after this the destination of the ship is voluntarily changed from the destination contemplated by the policy it is said to be a 'Change of Voyage.' The effect of a 'change of voyage' is to discharge the underwriter from liability as from the time when the determination to change is manifested. It is immaterial that the ship may not have left the course of voyage contemplated by the policy when the loss takes place. The position is the same when the voyage is 'abandoned', i.e., the ship, having started with the intention of sailing to the contemplated destination returns to the port of departure without any justifying cause. It is immaterial whether the risk be increased or decreased by a change or abandonment of voyage. The underwriter's liability comes to an end, the moment the decision for change or abandonment of voyage is arrived at. Similarly, if the ship sails from any port other than that specified in the policy or if it sails from the specified port of departure but for any destination other than that specified in the policy, the risk does not attach at all.

Delay

Again it is necessary that the voyage should be commenced and completed within a reasonable time, otherwise the underwriter will not be responsible.

When an insurance policy is taken, the vessel must sail from the agreed port within a reasonable time. It is required in all cases but in some cases it is very obvious, e.g., if the shipments are unreasonably delayed, the risk may increase on account of ice conditions or hurricanes or typhoons with the change of seasons. But even if the risk is lessened, an unreasonable delay is not justifiable.

Similarly, once the voyage is commenced, it must be completed with reasonable despatch. Not only the port of destination be proceeded to without delay, but the venture too must be completed in the discharge of goods. Again if the goods are insured for inland risks they should be forwarded to the warehouse or store promptly. Thus there should be no unreasonable delay in commencing or in completing the adventure, otherwise the underwriter is discharged from liability from the time when the delay became unreasonable. The question what is unreasonable is a question of fact. Delay in prosecuting the voyage is excused under certain circumstances which are discussed under the next heading.

Deviation

When the particular course of a voyage has been described in the insurance policy, it must be followed or where no such course is designated, the customary course must be followed. Any departure from the specified course or in its absence from the usual or customary course amounts to deviation. When the deviation takes place without any lawful excuse, the underwriter is discharged from the liability from the time the deviation takes place.

A 'deviation' can be distinguished from a 'change of voyage' in so far as in the latter the port of destination agreed upon is changed, while in the former case the destination is the same as agreed, but the course thereto is deviated from. In the case of change of voyage, the underwriter's liability comes to an

end from the time the decision to change the voyage is taken, but in case of deviation the mere intention of deviation is immaterial, there must be an actual deviation to discharge the underwriter of the liability under the policy. If once the deviation has taken place the risk ceases to attach for the rest of the voyage and loss cannot be realised even though it might have occurred after the vessel had reverted to the proper course. It is immaterial that the risk is not increased by the deviation.

However, deviation or delay is allowed in certain cases which means that the contract will remain valid in spite of the deviation. Such cases are given below:

(i) *Where authorised by any special term in the policy.*

If deviation or delay in prosecuting the voyage is 'authorised' by any special term in the policy, such deviation or delay is exusable. The authorisation must be by a 'special term' in the policy, and this is incorporated in the policy by the insertion of a clause called the "Deviation and/or Change of Voyage Clause."

It will be seen that the shipper who takes insurance has no control over the movements of the ship and he has to agree with the shipowner to allow deviation, change of voyage or any variation according to the terms of the bill of lading or contract of affreightment. In such a case, it will be a great hardship to the shipper if deviation is not covered. Hence underwriters are usually prepared to extend the protection of their policies by inclusion of the above clause. Thus the insured is covered for both deviation and change of voyage, and the only duty of the assured is to give prompt notice to the underwriter and to pay the additional premium which should be reasonable.

- (ii) *Where caused by circumstances beyond the control of the master and his employer.*

Such circumstances may be when the ship is blown out of her course by violent gales or when the master had to return to his home-port on account of the threat of the crew to leave the ship if he would not return to home-port because they feared attacks of pirates if the voyage was continued. In these cases the deviation is allowed.

- (iii) *Where reasonably necessary in order to comply with an express or implied warranty.*

Any deviation or delay in order to make the vessel seaworthy is excusable.

- (iv) *Where reasonably necessary for the safety of the ship or subject-matter insured.*

A vessel, for example, may meet with violent weather, and be so damaged that it becomes necessary to put her into a port of refuge for repair or a large proportion of her officers or crew may have died from sickness or other causes and it is necessary to put her into port to procure fresh officers or crew. Deviation in such cases would be excusable.

- (v) *For the purpose of saving human life, or aiding a ship in distress where human life may be in danger.*

- (vi) *Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship.*

Both the above excuses for deviation are justified on the grounds of humanity. It should be noted that the former deviation is excused for the purpose of saving human life only and it does not cover a deviation to save property alone.

- (vii) *Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against.*

Barratry can be defined as any wrongful act wilfully committed by the master and/or the crew of a

vessel to the prejudice of the shipowner and without his consent. Any deviation or delay on account of barratry is excused, if barratry is covered by the policy.

It should be noted that 'when the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable despatch.' In other words, after an excusable deviation there should be no unreasonable delay in resuming the voyage, otherwise deviation would occur which would not be excused.

Touch and Stay

This clause means that the vessel in the course of her voyage must touch and stay at such ports and in such order as are mentioned in the policy and if no such mention is made, the ports called must be in the ordinary course of the voyage and they must be ports usually called at in the particular trade in which the vessel is engaged. Following are the wordings of the standard policy.

"And it shall be lawful for the said ship, etc., in this voyage to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance."

Though the meaning of the above clause appears to authorise the ship to touch and stay at any port she thinks fit, the courts have interpreted it in a restricted sense. The ports or places at which the vessel calls must be the usual calling places on the recognised route for vessels engaged in that trade and the call must be for some justifiable purpose regarding the voyage insured.

CHAPTER XVII

THE POLICY AND ITS PHRASEOLOGY (Contd.)

Name of vessel

The name of the vessel by which the voyage is to be made is usually inserted in the policy in the space provided following the words—

“Upon any kind of goods and merchandise....
....in the good ship or vessel called the.....”

Though it is not legally necessary to mention the name of the vessel, it is usually inserted in the body of the policy. Of course once the name of a particular vessel is mentioned it cannot be changed unless with the consent of the underwriter, although the vessel so substituted may be even better than the original one. But if the original ship during the voyage becomes disabled due to a peril insured against and the cargo is transhipped to another vessel, the liability of the insurer continues, notwithstanding the change of the vessel.

The expression ‘good ship or vessel’ is meant to remind the assured of the implied warranty of seaworthiness. But the word ‘good’ is superfluous, as even in its absence the ship must be seaworthy and this condition is implicit in a marine insurance contract.

Name of the Master

The name of the master is also to be inserted in the space provided in the following manner.

“.....whereof is master under God, for the present voyage,.....or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship or the master thereof, is or shall be named or called.....”

In old times when the safety of the ship or the cargo depended to a large extent on the skill and ex-

perience of master, it was necessary to mention his name and it could also serve as a close identification with the vessel. However, with modern up-to-date means of transport and communication and the adequate registration and classification of the vessels existing to-day, it is not very necessary now to insert the name of the master and in actual practice it is not mentioned except in special cases where a navigator of exceptional experience is required. Of course once the name of master is inserted, it cannot be changed except when the master originally named is prevented from taking command by reason of accident, illness, or otherwise. Again no element of misrepresentation regarding the master can be justified under the words of the policy which appear to be very liberal.

The wording "or by whatsoever other name or names the said ship or the master thereof is or shall be named or called" affords protection to the assured against any inaccurate spelling or insertion of wrong name of the master provided it was innocently made and such error has not misled the insurer.

The subject matter insured and the valuation

The formal words of the policy regarding the subject-matter and valuation are as follows:—

"The said ship, etc., goods and merchandises, etc., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at....."

It is legally required that the subject-matter insured must be specified in the policy. The description of the goods insured must be made with reasonable accuracy including a statement as to quantity, shipping marks, numbers, etc., as the rate of premium is fixed in view of the risk which considerably depends on the nature of the goods and their susceptibility to damage.

Passing now to the question of value, it may be observed that it is not necessary to mention it in the policy. If it is mentioned, it is called "Insured Value" and the policy is called "Valued Policy." If it is not mentioned, the space will be left blank and the value will be determined when the loss takes place; in that case, it is called "Insurable Value" and the policy is called an "Unvalued Policy." Unlike the value, the insured sum must be given in the policy. In the case of loss, the measure of indemnity will be determined with reference to the assured sum and the value, be it insured or insurable. The insured value is arrived at by the agreement between the assured and the underwriter and a reasonable margin of profit is allowed to be included in arriving at it. The measure of insurable value is ascertained as follows:—

(1) In hull insurance, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole:

The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade:

(2) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance:

(3) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole:

(4) In insurance on any other subject-matter, the insurable value is the amount at the risk of the

assured when the policy attaches, plus the charges of insurance.

The Perils insured against

When a person insures his house against fire there are only two parties involved in the contract—he and the underwriter. If any loss takes place on account of fire, the loss will be realised from the underwriter. In the case of marine insurance, however, the matter is not so simple. The contract between the shipper and the shipowner is expressed in the Bill of Lading which will explain as to for which risks the shipowner will be responsible. But the nature of many of the marine risks is such that they are not within the control of the shipowner and, therefore, the shipowner takes no liability for them by mentioning the names of the excepted perils in the Bill of Lading. The exceptions were originally three in number, viz., “The Act of God, the King’s enemies and dangers of seas” but subsequently their number was increased.

The shipper who wishes to be fully protected for these perils has to enter into contract with an insurer. The standard form of policy which covers the marine risks runs as follows:—

“Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage: they are of the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises and ship, etc., or any part thereof.”

It should be borne in mind that the insurance policy does not cover all the possible risks which may

arise in course of the venture, it covers only those perils which are specified in the above wordings. These perils are discussed as under:

Perils of the Seas. This term refers only to fortuitous accidents or casualties of the seas. It does not include ordinary action of the winds and waves. By the implied warranty of seaworthiness, it is understood that a ship will be in such a condition as to withstand the ordinary waves and winds and the perils which are natural and frequent on the particular route. Any loss arising out of such perils is excluded from the perils of the seas and the underwriter is not liable for them. The 'perils of seas' usually relate to casualties which might occur and not to those which must occur. According to Phillips "Perils of the Seas.....comprehend those of the winds, waves, lightning, rocks, shoals, collision, and, in general, all causes of loss and damage to the property insured arising from the elements and inevitable accidents." To this list may also be added foundering and disappearances at sea through unknown causes.

It should be noted that if the loss arising out of any of the perils of the seas insured is attributable to the fraud or wilful misconduct of the assured, the underwriter is relieved from the liability under the policy. However, in such a case if the interests of an innocent third party are involved, the position is reverse and the underwriter continues to be liable under the contract notwithstanding the misconduct or negligence of the master or crew.

Men-of-War. Men-of-war are vessels authorised and maintained by nations for the purpose of defence or attack in the event of hostilities. Any damage to the goods on board arising out of collision against a man-of-war is recoverable from the underwriters under this risk.

Fire. Fire is one of the insured perils, which is responsible for a large number of marine losses. In spite of the modern fire protection, detection and

extinction equipment the underwriters have to meet enormous losses from serious fires every year. It should be noted that losses arising out of every type of fire are not covered by the policy. Damage caused by smoke, or by the heat of fire is regarded as damage by "fire"; and damage by water used to put out or prevent the spread of fire is also covered by the policy. Fire resulting from lightning, spontaneous combustion, explosion, negligence of the master or crew, etc. is covered by the policy. But if the fire takes place on account of the inherent vice or nature of the subject-matter insured, the underwriter is not liable to pay the loss provided he proves that it was so. Similarly an underwriter has no liability for a loss caused by the wilful misconduct of the assured.

The losses on account of perils of fire not covered by the standard form can be covered by having special clauses and paying the extra premium.

Enemies. It includes all types of ships and vessels belonging to the foe and any loss arising out of their action is covered under the policy. It also extends to all subjects of the enemy country and to their hostile acts, provided such acts formed part of the enemy campaign.

Pirates, Rovers, Thieves. The perils on account of pirates, rovers and thieves were very common in olden days and their frequency and magnitude though now gone down to a very large extent, are not completely eliminated. The acts by these persons are committed for the pursuit of private ends, as by robbery or murder in places beyond the jurisdiction of a state. The term 'thieves' does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

Jettisons. Jettison is the throwing overboard a part of the cargo, or part of a vessel's equipment for the purpose of lightening or relieving the ship in case of necessity or emergency. The throwing of the thing overboard must be intentional and with the purpose

of relieving the vessel from some imminent peril. Accidental falling of things does not constitute jettisoning. Jettison of cargo by reason of its own inherent vice is not recoverable.

Letters of mart and countermart, surprisals, takings at sea. 'Letters of mart' or 'Letters of marque' were powers granted by a state to persons who undertook to attack the enemies of the nation in revenge for losses where they had themselves suffered, and "Letters of countermart" were powers granted by the opposing nation to other persons to resist and retaliate upon such attacks. The term 'surprisals' is associated with capture and is now an obsolete term. The term "Takings at sea" relates to stopping and taking into port for examination a ship suspected of carrying contraband of war to the enemy.

Arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever. These risks, including the risks in previous heading and men-of-war, pirates, rovers and thieves are war risks. The underwriter is responsible for any loss arising out of any of the above perils of war, but these days there is a tendency to exclude these risks by insertion of a clause in the policy and the clause can be deleted only after the payment of an extra premium.

Barratry of the Master and Mariners. The term 'barratry' includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer. The act, to be barratry, must have been committed without the connivance of the owner. The casting away of a vessel by the master or crew, the setting fire to her, or fraudulently selling either the vessel or cargo, or both, and appropriating the proceeds are examples of barratry. The underwriter is liable for losses arising out of barratry.

Other perils. The policy next includes 'all other perils.' This is a very comprehensive term but

the law has interpreted it very narrowly as 'to include only perils similar in kind to the perils specifically mentioned in the policy.'

It should be noted that according to the intentions of assured and underwriters, the printed words of the policy may be extended, modified or nullified by mutual agreement and new clauses may be inserted. Such clauses will be discussed at the end of this chapter.

Sue and Labour Clause

Next in order in the policy follows what is known as the "Sue and Labour clause." It runs as follows:—

"And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured."

By this clause the assured is allowed to take necessary steps in order to avert or minimize a loss. Any expenses in this direction incurred by the assured or by anybody else on his behalf will be proportionately paid by the underwriters. The expenses may include, according to the circumstances, special landing charges, re-conditioning, warehousing and re-forwarding charges, etc. In this connection the following points deserve consideration:

(i) It is not left to the option of the assured to take action under this clause. It is his bounden duty to take measures for averting or minimizing a loss.

(ii) The expenses under this clause can be realised only when they have been incurred to avert or minimize losses which might arise by the operation of some peril insured against. The underwriter is

not responsible if the loss would have arisen on account of a peril not insured.

(iii) The measures taken by the assured and his agents for the purpose of averting or minimizing a loss must be prudent and reasonable.

(iv) The underwriter under this clause will pay his share in proportion to the amount which the policy bears to the insured value. If the subject-matter of insurance be subsequently totally lost, sue and labour charges incurred would be recoverable from the underwriter over and above the payment of a total loss under the policy.

Waiver Clause

This clause is supplemental to the preceding Sue and Labour clause and is for the benefit of both the assured and the underwriter. Its wordings are as follows:—

“And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment.”

This clause authorises the underwriter, as well as the assured, to act in protecting their mutual interests, without prejudicing their respective legal rights, with special regard to abandonment. It provides that, on the one hand, if notice of abandonment¹ has been given by assured and declined by the insurer, any steps taken by the assured under the sue and labour clause shall not be deemed as a waiver of the notice of abandonment given already by him; nor, on the other hand, shall any acts by the insurer be regarded as an acceptance of the abandonment which he has already declined.

1 See page 187.

Premium Clause

The next clause relates to the consideration or the premium under the contract and it reads as follows:—

“And so we, the assurers are contended, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the accused, at and after the rate of

In all business contracts, the existence of the valuable consideration is of utmost importance for their validity. Similarly, in marine contracts, this consideration is the payment of the premium to the underwriter who agrees to indemnify the assured against loss by the perils insured against; and the rate of premium is inserted in blank space. The underwriter acknowledges the receipt of the premium, though in practice it is never paid on the date of issue of the policy, but according to custom is paid usually on the 8th of the month following the effecting of the insurance. The policy with the acknowledgement of the premium is the conclusive evidence of the contract between the assured and the underwriter.

Memorandum Clause

The last clause of the standard form reads as under:—

N.B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent, and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent. unless general, or the ship be stranded.

This clause was introduced into the policy in 1749 and is meant to provide a minimum limit to the

underwriter's liability regarding claims for particular average by exempting him from such claims, either absolutely or partially depending on the susceptibility of the subject-matter insured. This clause divides the subject-matter in three categories according to the perishability in the following manner:—

(1) The underwriter is not liable for partial loss on corn, fish, salt, fruits, flour and seed at all.

(2) The underwriter is not liable for partial loss if it is less than 5 per cent. on sugar, tobacco, hemp, flax, hides and skins. These commodities are less susceptible to damage than those in the first category.

(3) The underwriter is not liable for the partial loss if it is less than 3 per cent. on all other goods including the ship and the freight.

But there are certain exceptions to the above limits to the underwriter's liability and he has to assume the partial losses even if they fall below the specified limits mentioned above. The memorandum clause becomes inoperative under the following cases:—

(1) If a partial loss is a general average loss.¹

(2) If the ship is stranded, i.e., she is run aground and becomes stationary resulting in the resting or interruption of the voyage.

Attached Clauses

In modern times, there has developed the practice to make the insurance subject to clauses attached to or otherwise added to the standard form of policy in order to meet the circumstances of the individual cases. These clauses may amend the conditions of insurance contract, limit or extend the perils insured against, or provide for certain stated exigencies of modern commerce.

The Institute of London underwriters have evolved these clauses and hence they are known as the

¹ See page 196.

"Institute of Cargo Clauses." They are many in number but some of the important clauses are given below. During the recent world-war, many new clauses had been introduced in the name of war-time extensions.

The F. C. & S. Clause. The modern practice is to consider the war perils apart from the marine perils and the underwriter is exempted from the war perils by the inclusion of F. C. and S. (Free of capture and seizure) clause. This clause has now become an integral part of the policy. The clause can be deleted after paying extra premiums, in that case the underwriter shall be responsible for war perils as well.

F.S.R. and C.C. Clause. By the inclusion of the "Strikes, Riots, and Civil Commotions clause," the underwriter is exempted from the risks on account of strikes, riots and civil commotions. If the assured wants to cover these risks in the policy, he can do so by deleting this clause after paying an extra premium, if any.

Frustration Clause. It may so happen that the voyage or the adventure may be frustrated by agencies other than enemy powers causing loss to the assured and this loss can be covered from the underwriters, e.g., at the outbreak of the Great War, British and non-enemy vessels were prohibited from completing their voyages to enemy destinations by the British and Allied powers. In some cases they were ordered to proceed to British ports where their cargoes were discharged and sold. The underwriters were held liable in such cases for a total loss, less proceeds of sale. The Frustration clause was introduced to exclude this risk from the policy and relieve the underwriters from such losses. Thus the clause excludes the liability for losses based upon frustration of the adventure.

It will be seen that the Frustration clause can come into operation only when the F. C. & S. clause is deleted.

F. G. A. (Foreign General Average) Clause. In the absence of any stipulation to the contrary in the contract of affreightment, the law which must govern the adjustment of general average is the law of the port, i.e., of the port of destination, if the voyage is completed or of the intermediate port if the voyage is broken up. The laws of the various countries respecting general average differ materially and with that the liability for contribution would also vary according to the port where the voyage is broken up. In order to avoid this difficulty, it is provided by this clause that the general average contribution will be adjusted according to the law of the foreign port wherever the adjustment is made and it will be acceptable both to the insurer and the insured.

F. P. A. (Free of Particular Average). By the inclusion of this clause, the underwriter is exempted from any liability in respect of particular average. Of course, if the partial loss is not particular average the underwriter will be liable for it.

W. P. A. (With Particular Average). It means that the particular average is covered under the policy and the underwriter is responsible for it.

F. A. A. (Free of All Average) Clause. It relieves the underwriter from all average claims, general and particular average, etc.

A. R. (All Risks) Clause. This clause gives protection against all risks. The expression "All Risks" must be understood in a limited sense as referring to those perils consequent upon or incidental to the navigation of the seas, or to transit more generally.

Warehouse to Warehouse Clause. This clause has already been dealt with previously¹ and is introduced to cover such inland risks as are incidental to sea voyage. The clause ceases to operate as soon as the goods reach the warehouse at the destination, or

¹ See page 163.

after 15 or 30 days from the discharge of the cargo from the vessel used for ocean transport, whichever ever occurs first.

R. D. C. (Running Down Clause). This clause is usually included in hull policies and is also called 'Collision Clause'. According to this clause the underwriter agrees to take upon himself the risk of liability of the owner of the ship, for damage done by the vessel insured owing to collision with another vessel to the extent of three fourths of such liability. This clause was introduced later on and without this the underwriter is not responsible for the loss done to another vessel in collision under the ordinary terms of the policy. The idea of limiting the cover to three-fourths was to compel the assured to bear one fourth of his loss so that he may exercise greater care in the navigation of the insured vessel than he would take if he were relieved of his liability completely. Now, of course, the full protection can be afforded by deleting the words "Three-fourths" from the clause.

Continuation Clause. It is included in a 'Time' policy by which it is agreed that if the policy on the vessel expires while she is on sea, or if the voyage on which she was engaged was not then completed, the vessel shall continue to be covered under the policy at a pro rata premium to her port of destination provided previous notice be given to underwriters.

Hague Rules

In order to avoid disputes or facilitate their settlement with a view to promote the international overseas trade and commerce, a Maritime Law Committee of the International Law Association sat at Hague in 1921 and framed a set of rules regarding the rights and liabilities of cargo-owners and ship-owners in connection with Bills of Lading. These rules have been set in a very fair and equitable way and are calculated to indicate respective rights and

responsibilities of the shipowners and the cargo-owners in a most clear cut way so that no complications may arise in their determination. These rules are known as the Hague Rules of 1921 and though they do not directly concern marine insurance, their principles have been incorporated in the English Carriage of Goods Act of 1924.

CHAPTER XVIII

MARINE LOSSES

As observed previously, any loss arising in a marine adventure has to be borne by any of the three parties, i.e., the shipper, shipowner or the insurer. If the loss takes place on account of a risk which is covered by the contract of affreightment, the shipowner or the carrier will be responsible and he will have to pay the loss to the shipper. If the loss takes place on account of any of the perils insured against with the insurer, he will be liable for it and shall have to make good the loss to the insured (i.e., the shipper). If the loss takes place on account of a risk which is covered neither by the contract of affreightment nor by the insurance contract, the shipper himself shall have to bear it. Of course most of the perils are insured with the insurer and in all such cases the liability falls upon him to indemnify the assured. In a particular case whether the loss is recoverable from the insurer or not will depend upon the fact whether the risk resulting in loss is insured with the insurer. If it is insured the insurer will indemnify the assured, otherwise not. The principle governing this point is discussed below.

Doctrine of *Causa Proxima*

When the loss is caused by the operation of a peril and if this peril is an insured one, the under-

writer is responsible to make good the loss. But the difficulty arises when the loss is caused by the operation of several contributory causes or a chain of causes, some of which are insured, while others are not. Under such circumstances, the principle of proximate cause is applied in order to determine the liability of the underwriter. This principle is expressed in the well-known legal maxim "*Causa proxima non remota spectatur*" (the proximate and not the remote cause must be looked to). It means that when the loss arises on account of a series of causes, the proximate cause should be regarded as the cause for loss and if it is an insured peril the underwriter will be responsible. Thus the insurer is liable for any loss proximately caused by a peril insured against. In a vessel, rats had gnawed a pipe and as a consequence of it the sea water entered the pipe and the cargo was damaged by the action of salt water. In this case, there were two causes—rats and salt water. The latter risk was insured while the former was not. The proximate cause is the action of salt water and this being an insured peril the underwriter was held responsible to meet the claim.

However, the task of determining the proximate cause is not an easy one where several causes have been at work. The meaning of the proximate cause should not be taken in its literal sense. The cause which is proximate need not necessarily be nearest in time but it should be proximate in efficiency. The fact that the hazard which was the proximate cause was not in activity at the consummation of the disaster would not preclude that peril from being the actual and efficient cause of disaster. The detailed application of the principle of *Causa Proxima* can be understood only by reference to the cases relating to the various perils insured against. However, in this connection the following provision of English Marine Insurance Act will be helpful in understanding the scope of the principle.

(a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew.

(b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against.

(c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin or for any injury to machinery not proximately caused by maritime perils.

The onus of proof, that the loss took place on account of a peril insured against under the policy lies on the assured.

Types of Marine Losses

Marine losses are of two types, viz., (A) Total loss and (B) Partial loss. A total loss can be either (i) actual or (ii) constructive. A partial loss has the following four kinds. (1) Particular average loss (2) Particular charges, (3) General average, and (4) Salvage charges. Any loss other than a total loss is a partial loss. Insurance can be taken to cover total loss or partial loss or both. A particular loss can be realised only when it is covered by the policy. If the policy covers both total and partial losses, the assured can make claim for a total loss and if it cannot be substantiated he can make a claim for a partial loss. An insurance against total loss includes a constructive as well as an actual total loss, unless agreed otherwise.

A. TOTAL LOSS

If the subject-matter insured is totally lost, there is a total loss, e.g., if the goods are completely destroyed by fire or captured by an enemy then the total loss is apparent and it can be realised from the underwriters if the risks of fire or war are insured. When a total loss of the part of the subject-matter insured takes place, the difficulty arises in determining whether the loss should be regarded as a total loss or partial loss. In such a case, if the part is a complete 'apportionable part', it will be treated as a total loss. An apportionable part is one where goods are insured in such a way that separate valuations are applied to subdivisions and each subdivision and its apportioned value are considered separately in connection with a claim. The loss of such part is regarded as a total loss; on the other hand, in the absence of such separate valuations being allowable, the total loss of part will be treated as a partial loss. It should be noted that in case of a total loss the measure of indemnity will be determined with reference to the 'insured' or 'insurable' value of the subject-matter insured and the assured sum. This point has been already referred to previously.¹

(i) Actual Total Loss

Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured or where the assured is irretrievably deprived thereof, there is an actual total loss. The vessel or her cargo might have sunk beyond recovery, or completely lost by fire; it might be a 'missing' ship; it might have been captured by an enemy, pirates or thieves, etc., (here assured is irretrievably deprived of the ownership and possession of the subject-matter), or the interest might have been so changed in consequence of the peril that it has ceased to be a thing of the kind insured (e.g., hats may become shapeless

¹ See page 149.

pieces of felt or straw). These are all examples of total losses.

When there is an actual total loss because the subject-matter had ceased to be of the kind insured, the assured will get the full amount of total loss from the insurer, who will be subrogated to all rights and remedies in respect of property. Any amount realised by the sale of the material which remains of the insured goods will go to the underwriter, but if the assured wants to retain such materials, an agreed amount representing their value will be deducted from the amount of total loss and the balance will be paid to the assured.

(ii) Constructive Total Loss

Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred. The example of a constructive total loss would be where the cargo can be saved from a wrecked ship, but the total expenses from the time steps are taken to remove the goods from the ship to the time of arrival at the destination would be greater than the value of the goods on arrival. In such a case, the goods may be abandoned and the underwriters will have to pay the full insured value. However, the assured is not compelled to abandon his interest and the law provides that where there is a constructive total loss, the assured may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss.

Notice of abandonment

If the assured wants to recover a claim for a constructive total loss, he must abandon his interest in

the subject-matter insured to his insurer, i.e., he must surrender his interest in whatever is left of the subject-matter insured to the insurer, and claim from him a total loss. Thus if the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so, the loss can only be treated as a partial loss. The notice of abandonment must be given with reasonable diligence after the receipt of reliable information of the loss. It can be given orally or in writing. Again the notice when given, should be unconditional and absolute. On receipt of the notice, the underwriter may either accept or decline it. If he elects to accept the notice, he shall have to indemnify the insured for the total loss. On the other hand, when he rejects the notice, the assured should at once commence legal action against the underwriter, if he wants to enforce his claim for a constructive total loss.

Difference between Actual and Constructive Total Loss

Actual total loss relates to the physical impossibility, while the constructive total loss relates to the commercial impossibility. If in a vessel the hides become so damaged by sea water that it is certain that before the vessel reaches the port of destination, the hides would cease to exist as hides and would become a mass of putrified matter, the case is of an actual total loss. But if by any process it was possible to restore the hides to their original condition, though the cost of so doing would exceed their value at destination, the damaged hides can be abandoned, as the completion of the adventure has become commercially impossible. Here the loss would be a constructive total loss. No notice of abandonment is necessary in case of an actual total loss.

Salvage Loss

When there is an actual total loss because the subject-matter is so damaged as to cease to be a thing

of the kind insured or when they have been sold short of destination due to their inability to reach the destination in specie, or, where there is a constructive total loss, the usual form of settlement is that the net sale proceeds (amount realised by the sale, less the expenses for the sale) will be paid to the assured and he will recover from the insurer the total loss less the net amount thus received. This net amount received from the insurer is termed as a 'salvage loss.'

Making a claim for Total Loss

As soon as the assured comes to know of the total loss, he must inform the underwriter about his claim. He must submit the following documents to substantiate his claim:—

(1) *Insurance Policy*. It furnishes an evidence of the contract of insurance and the terms of it.

(2) *Bill of Lading*. It will show the correspondence of the insurance contract with the voyage and vessel.

(3) *Copy of the Invoice*. A copy of the invoice relating to the goods insured should also be sent. It will help in estimating the correct value of the goods.

(4) *Protest*. When the total loss is due to the loss of the vessel, or other accident, a copy of protest must be sent. The protest is signed by the master or by such member of the crew as has been saved, and sworn before a Notary or Consul.

(5) *Letter of Subrogation*. If anything remains of the subject-matter insured after the total loss or if there are any rights or remedies regarding the interest or against third parties, a letter of subrogation must also be sent. According to the law, when the underwriter has indemnified the assured, he becomes entitled to all rights and remedies in respect of the subject-matter as from the time of the casualty causing the loss. He can exercise these rights and

remedies only on the strength of the letter of subrogation.

(6) *Notice of Abandonment.* If there is a constructive total loss, the notice of abandonment must be given in the manner discussed above.

B. PARTIAL LOSS

(1) Particular Average Loss*

A particular average loss is defined as 'a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.' A general average loss is a voluntary and deliberate loss, and in contrast to that a particular average is fortuitous or accidental. A loss to be a particular average loss must fulfil the following requirements:—

(1) It should be the loss of a part of the subject-matter only.

(2) The loss should be of the particular subject matter only.

(3) The loss should be accidental and not intentional.

(4) The loss should be caused by a peril insured against.

Particular Average on Cargo

A particular average loss may be either the damage and depreciation of a particular interest or a total loss of its part. As discussed previously, the total loss of part can be regarded either as a total loss or as a particular average loss. If the property is insured under one value for the whole, and it is all of the same kind, quality or description, a total loss of part will be recovered as a particular average loss only, e.g., when wheat is shipped in bulk, some of it might be pumped out during a storm, this will be a case of a particular average loss. In such a case, the

1 The word 'average' denotes a partial loss.

measure of indemnity will be based upon the value (insured or insurable) of the part lost in proportion to the value (insured or insurable) of the whole of which it forms a part and then applying this proportion to the sum insured.

In a case where goods are delivered in a damaged condition or where their value at destination is depreciated, the resulting particular average loss will be adjusted upon the basis of comparison between the gross sound and damaged values. The law on this point states that 'where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value.' The process of arriving at the particular average loss is as follows:—

(1) Find out the gross sound value on arrival of the goods damaged or depreciated. This is the amount for which the goods would have been sold had they reached the port of destination in sound condition.

(2) Then find out the gross damaged value of the goods damaged or depreciated. This is the actual amount for which the goods in the damaged or depreciated condition are sold.

(3) Deduct the gross damaged value from the gross sound value. The difference is the measure of the actual damage or depreciation.

(4) Divide the amount of damage or depreciation by the gross sound value. This will give the ratio of the damage or depreciation.

(5) Apply the above ratio to the value (insured or insurable value as the case may be) of the damaged or depreciated goods and it will give the amount of particular average loss.

(6) Of the amount thus arrived at, the underwriter is liable for that proportion which his sum insured bears to the value (insured or insurable). Usually the sum insured and the insured value correspond exactly, and, therefore, the underwriter is liable simply for the ratio of the sum assured.

Illustration:

Suppose a cargo was valued at Rs. 10,000. Half of the goods are damaged which would realise Rs. 2,000 only. It is to find out the amount of particular average, if the damaged goods would have realised (a) Rs. 4,000, (b) Rs. 8,000, had they reached undamaged.

(a) Gross sound value on arrival ..	Rs. 4,000
Cross damaged value on arrival ..	Rs. 2,000

Damage ..	Rs. 2,000
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Damage is Rs. 2,000, it is $\frac{1}{2}$ of gross sound value. Hence, the claim on policy is $\frac{1}{2}$ of Rs. 5,000 = Rs. 2,500.

(b) Gross sound on arrival ..	Rs. 8,000
Gross damaged value on arrival ..	Rs. 2,000

Damage ..	Rs. 6,000
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The damage is $\frac{3}{4}$ of gross sound value.

Hence, the claim on policy will be $\frac{3}{4}$ of Rs. 5,000 = Rs. 3,750.

From the above two cases, it will be clear that the amount of claim payable by the underwriter for a particular average loss will be more or less than the actual damage according to the fact whether the insured value of the damaged subject-matter is more or less than its gross sound value. It has been assumed in the above cases that the policy was valued and the assured sum was equal to the insured value, otherwise the calculation would have entailed further complications. The main reason for the above

voices of the whole interest and letter of subrogation. If the policy covers the particular average loss only, in case of stranding or other accident a copy of Master's protest should also be supplied. As an evidence of the amount of particular average claimed and also to show that the percentage according to the memorandum clause has reached, a Survey Report should also be sent. Similarly a Bill of Sale, or other similar document should also be given, if the loss is determined by selling the damaged goods.

Particular Average on Ship

When there is a particular average claim on a ship, the assured is entitled to the reasonable cost of repairs, less the customary deductions. When a ship is repaired, the old material is replaced by the new one and this results in the betterment of ship. Hence some deductions on account of "New for old" are made from the cost of repairs. This is the old established practice but the Institute Voyage and Time Clauses and the clauses based upon them now provide that no such deduction shall be made.

It should be noted that the insured value of the ship is not considered at all in the adjustment of the particular average loss except (i) that it sets up the limit to which a claim can be made, and (ii) to ascertain that the claim exceeds three per cent. of the insured value.

In order to lessen the severity of the memorandum clause in cases where the particular average may be below three per cent. and still a very high amount, the total value of a ship is divided into different parts, e.g., Hull and materials, machinery and boilers, cabin fittings and furniture, etc., so that the percentage will be calculated on each sub-division to make the underwriter liable.

Particular Average on Freight

The freight may be paid in advance or at destination. In the former case, the cargo-owner will have realised the loss of proportionate freight with his

claim for cargo because the freight is also included in the insured value of the cargo. If the freight is to be paid at the port of destination, the shipowner will lose the proportionate freight as he is entitled to it only when goods are delivered at the destination. In such a case if he has taken a policy on freight, he will be able to recover from his underwriters such proportion of the sum insured as the portion of cargo lost bears to the whole cargo.

Janson Clause

According to the memorandum clause, if the particular average loss amounts to, or exceeds the stipulated percentage (which is three or five per cent. fixed for the different commodities), the underwriter pays the *whole* of the loss to the insured. But on the continent, a different practice is finding increasing favour according to which the underwriter is liable *only for the excess* of the fixed percentage. This is called 'Janson Clause' and the stipulated percentages are termed 'Franchise.' This is based on the idea that a proportion of the loss should fall upon the assured.

(2) Particular Charges

The 'Particular Charges' also known as 'Special charges' have been defined as 'expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges'. Particular charges are not included in particular average. They are incurred short of destination in respect of the particular interest insured, and following upon some loss or misfortune. Particular charges are incurred under 'Sue and Labour Clause' in order to avert or minimize, or as a consequence of, a loss covered by the policy. The rule of franchise is not applicable to particular charges. They are recoverable from the underwriter if the following conditions are fulfilled:—

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(i) They must have been incurred to avert or minimize a loss insured against.

(ii) They must have been incurred in respect of a particular interest only.

(iii) They must have been incurred by the assured or his agent.

(iv) They must have been incurred short of destination.

(3) General Average Loss

A general average loss is one which is caused by an extraordinary sacrifice or expenditure voluntarily and reasonably made or incurred, under fortuitous circumstances, for the sole purpose of preserving the common interest from an impending peril. An analysis of the definition reveals the following elements of the general average loss:

(i) The loss must be extraordinary in nature. The sacrifice or expenditure must not be one which is necessarily involved in performance of the contract of affreightment. The condition indicates a state of affairs which may compel the master to do something beyond his ordinary duty for the preservation of the whole adventure.

(ii) The whole adventure must be imperilled. The peril must be real and not imaginary, i.e., it must be substantial and threatening, and something more than the ordinary perils of the sea. Sacrifices made under the mistaken notion that peril existed, e.g. where a ship was thought to be on fire, would not be allowed.

(iii) The general average act must be voluntary and intentional, and all accidental loss or damage is excluded. In other words, the loss must be the result of the deliberate act of the master.

(iv) The sacrifice or expenditure must be made or incurred reasonably and prudently. The master of the vessel is naturally the man who is responsible for deciding as to what is reasonable under particular circumstances.

(v) The object of sacrifice or expenditure must be the preservation of the whole adventure. It must not be for the safety of the ship or the cargo alone, nor merely for the completion of the adventure. This is the English law. Laws of many foreign countries provide that the object of completion of the adventure justifies a general average act.

(vi) The loss must be the direct result of a general average act. Demurrage and loss of market are indirect consequential losses and hence cannot be allowed in general average.

(vii) The party claiming contribution should not be at fault.

(viii) The attempt to avoid the imminent common peril must be successful at least in part. It may happen that after the voluntary sacrifices have been made, the entire venture may be a total loss. In such a case, the sacrifices made have been abortive and only the total loss can be realised.

Types of General Average Loss

The general average losses are divided into two classes:

- (1) General average sacrifices, and
- (2) General average expenditures.

The most common example of general average sacrifice is "jettison" by which is meant the throwing overboard of part of the cargo in order to lighten the ship. Similarly, the use of cargo as fuel; the voluntary destruction of a part of the ship; cutting away of masts, spars and sails; damage by water used to extinguish fire are instances of general average sacrifice.

The examples of general average expenditure are where vessels are put for safety into ports of refuge and additional port charges are incurred; to enable the repairs of the ship to be effected, some of cargo might be discharged and further expenses might be incurred for reloading and leaving the port, etc. Of

course, the expenses which fall upon the shipowner in connection with discharging his duties under the contract of affreightment are not general average expenditure.

The General Average Contribution

Where there is a general average loss, the party on whom it falls is entitled to a ratable contribution from the other parties interested, and such contribution is called a general average contribution. The task of adjusting the general average loss among the different parties is a complex one and involves the consideration of the following three questions:—

- (i) What are the contributory interests?
- (ii) What is the amount to be made good?
- (iii) What are the contributory values?

(i) Contributory interests

When a general average loss takes place, the party whose interest has been sacrificed is entitled to receive a ratable contribution from the other parties whose interests have been saved from destruction. Such interests usually are the ship, the freight, and the cargo. The contribution is subject to maritime law, e.g., the personal effects of the crew, the wearing apparel, jewellery and baggage of passengers, and mails are excepted from the general average contribution but if those interests are sacrificed, they are entitled to general average contribution.

When a general average loss is adjusted among different interests, it is of vital importance that the interest which has been sacrificed must also ratably contribute to the loss, otherwise it would be in a relatively better position by reason of being fully reimbursed for a loss which the other interests have to bear.

(ii) Amounts to be made good

(a) *Ship.* The amount to be made good in general average in respect of any part of the ship's mate-

rial is measured by the reasonable cost of repairs necessary to make her as serviceable as she was immediately before the general average sacrifice, less the usual deduction (if any) 'new for old.' The deduction is made because the replacement of old material by new results in betterment of the ship depending on its age. The cost of repairs is taken into account as they might have been actually incurred either at a port of refuge or at destination.

(b) *Cargo*. When the goods have been sacrificed, the amount to be made good in general average is their net value. The net value is arrived at like this: first the amount for which the goods sacrificed would have been sold on the day of discharge had they arrived safely is ascertained, then from this gross sum the amount of expenses (e.g., freight unpaid, discount, duty, landing and sale charges) which would have been incurred had the goods arrived instead of having been sacrificed is deducted. The balance is the net market value of the cargo sacrificed. Where the remaining cargo arrives damaged from causes which would have equally affected the sacrificed goods, the amount to be made good for general average purposes is their net value based on what the goods sacrificed would have realised, had they reached the destination damaged to the same extent as the other cargo. For goods arriving damaged owing to general average sacrifice, the allowance will be the difference between their net sound value and net damaged value.

(c) *Freight*. If the shipper has paid freight in advance on the cargo sacrificed, it is merged in the value of goods and is not deducted to arrive at the net value of the cargo. But where the freight is to be paid at destination, the shipowner will lose it and therefore it will be made good under general average loss. The amount to which the shipowner is entitled will be the gross freight which he would have earned, had not the goods been sacrificed, less the charges which he would have incurred to earn such freight

during the remainder of the voyage, but which he has, as a result of the sacrifice, not incurred.

Expenses. All extraordinary expenses properly incurred by the shipowner in time of peril for the joint preservation of all the interests are also made good under the general average contribution.

(iii) Contributory Values.

When it has been decided as to who are the parties to contribute and what is the total amount to be contributed, the next question is as to on what basis the contributory parties should contribute, i.e., in what proportion they have to contribute. Broadly, the interests contribute on the net values of their preserved interests at the place where the voyage ends. These values are known as contributory values and are arrived at as follows:—

(a) *Ship.* The shipowner will contribute on the ship's value as saved by the sacrifice. This value is the amount for which the shipowner as a reasonable man would be willing to sell her on arrival at her destination, or, at an intermediate port if the voyage is broken up there. The value is generally assessed by a professional ship valuer who can assess the value of any particular vessel to her owners.

(b) *Cargo.* The cargo-owner will contribute on the net arrived market value of the goods saved at the place where the voyage ends. This will be arrived at in the same manner as the net market value of the goods sacrificed is arrived at, i.e., from the selling price (gross value) the expenses incidental to the safe arrival of the cargo will be deducted.

(c) *Freight.* If the freight has been paid in advance by the shipper, it is included in the value of the cargo and, therefore, it will not have to contribute as a separate interest. But the freight at risk (i.e., the freight which will become due to the shipowner only when the goods arrive at destination safely) will

have to contribute on the basis of the net value of freight saved. It will be arrived at by ascertaining the actual sum of freight received at port of destination less the expenses of earning it from the date of general average act.

General Average Adjustment

When a general average loss has taken place, the shipowner upon arrival of the ship at the port of destination, or at an intermediate port if the journey is broken up, shall make up a statement for the adjustment of the loss among the various interests. The work of adjustment is a long process and involves several complexities of law and practice and therefore, he employs the services of a professional expert called the 'Average Adjuster' for the purpose of determining the share of each interest in the general average loss. As the shipowner is responsible for the collection of the contribution he has a general average lien on cargo. The expenditure incurred in the adjustment, including the fees of the Average Adjuster is also to be borne by all the parties, in the same proportion as the amount of general average loss.

The adjustment takes a long time and when goods are to be delivered before its preparation, the shipowner will hand over the goods to the consignee after taking a General Average Bond signed by the consignee. Where the general average loss is of considerable amount, the shipowner, in addition to the Bond, will require a General Average Deposit which may be sufficient to cover the estimated contribution due. It will be subject to adjustment by refund (or additional payment) on completion of the statement.

Illustration

A vessel, valued at Rs. 45,000 contains cargo worth Rs. 4,500 on which freight due is Rs. 500. Sup-

pose in the way whole of the cargo is jettisoned. The general average adjustment will be as follows:—

The amount to be made good:

Cargo	....	Rs. 4,500
Freight	....	Rs. 500
TOTAL		<u>Rs. 5,000</u>

The contributory values:

Ship	....	Rs. 45,000
Cargo	....	Rs. 4,500
Freight	....	Rs. 500
TOTAL		<u>Rs. 50,000</u>

It is assumed that the net values at arrival are the same as above. The contribution from the shipowner, cargo-owner and freight-receiver will be in the proportion of 90: 9: 1. Hence

The Shipowner will pay	Rs. 4,500
The Cargo-owner will pay	Rs. 450
The Freight-receiver will pay	Rs. 50
	<u>Rs. 5,000</u>

Thus the shipowner will pay Rs. 4,500. The Cargo-owner will receive in net: Rs. 4,500 — Rs. 450 (his contribution) = Rs. 4,050. The freight-receiver will receive in net Rs. 500 — Rs. 50 (his contribution) = Rs. 450.

As the shipowner is generally the freight-receiver, the net effect will be that he will pay Rs. 4,050 to the cargo-owner.

York-Antwerp Rules

Though the general average exists in all countries as a branch of maritime law quite apart from insurance from time immemorial, its practice in detail differs from country to country. In order to achieve

uniformity in the divergent rules of different maritime nations, meetings were held in New York and Antwerp and a code of rules was formed which is called York-Antwerp Rules of 1890. In 1924, these rules were revised at Stockholm and now almost all the contracts of affreightment include them.

General Average Loss on Sale

When the shipowner has to incur expenditure for the general safety of the adventure, he may be forced to sell some of the cargo to raise funds as there might be no other means available for getting money. In such a case, the cargo-owner is entitled to the actual sale proceeds and if there is any loss on account of such forced sale he will be entitled to recover this loss by general average contribution. This is called "General Average Loss on Sale." If, on the other hand, there is profit on the sale, it will go to the cargo-owner. Thus the cargo-owner is not to suffer any loss but is entitled to the profit, if any.

Substituted Expenses

When a vessel is damaged and seeks a port of refuge for the purposes of repair, the cargo has to be unloaded, warehoused and then reloaded after repairs. The expenses involved in this step may be very heavy and sometimes it may be possible to adopt an alternative course which may be far cheaper than the above one. The expenses incurred by such an alternative method are called "Substituted expenses," e.g., in the above case if the destination is near, the vessel may be towed to the port of destination from the port of refuge instead of being repaired there. Hence the expenses of towing will be substituted expenses. The substituted expenses will be apportioned over the various interests in the same ratio as the expenditure in connection with the more expensive course would have been borne had it been incurred. If the expenditure which has been substituted would have been wholly treated as general average, the substituted

expenses also will be included in the general average statement and be dealt with similarly.

General Average and Insurance

It should be clearly borne in mind that the liabilities to contribute towards the general average loss exist quite independently of the question of insurance. If the policy of insurance covers the general average the underwriter will have to meet the claim if the general average loss arose on account of a peril insured.¹ Where the assured has incurred a general average expenditure, he may recover from the insurer the proportion of the loss which falls upon him. If the assured fails to recover from the other parties to the adventure their respective proportions of the expenditure, he cannot recover them from his underwriter.

If the property of the assured had been sacrificed on account of a general average act, the assured can recover from the insurer the whole loss. In such a case, the insurer will be subrogated to the rights of the assured and will recover in assured's name the contributions from the other contributory interests.

Again where the assured has paid, or is liable to pay, a general average contribution in respect of the subject-matter insured, he may recover therefor from the insurer. Any provision in the policy regarding the percentage under the memorandum clause governing particular average, will in no way affect the liability of the insurer for the general average sacrifice. Of course, the general average cannot be included along with particular average in ascertaining whether any particular average percentage has been reached in order to render the insurer liable.

The measure of indemnity, or the extent of insurer's liability for general average contribution, is the full amount of contribution, provided the contributory value does not exceed the insured (or insur-

1 A policy covering the risks of 'total loss only' does not include general average.

able) value. If the contributory value exceeds the insured (or insurable) value, it will be a case of under-insurance and the insurer's liability will be ratably reduced.

(4) Salvage Charges

If a maritime property is in peril, the maritime law provides that any third party may try to save it. Such a party is entitled to a reward. The party saving the property is called "Salvor," the interest saved is called 'Salvage,' and the reward received by the salvor is called the 'Salvage Award.' But the word 'Salvage' is used to denote all these terms also. The salvage charges to be recoverable must fulfil the following conditions:

(i) The salvor should be a third party, i.e., a party not interested in the property. He should be under no legal obligation to act. The crew of the salvaged vessel cannot claim salvage for assisting the endangered ship and cargo.

(ii) The expenses can be claimed only for the services in saving maritime property, e.g., ship, cargo or freight.

(iii) The salvage services must be either wholly or partially successful. No reward for services, or payment for loss or expenses, can be claimed by salvors where the services have been unsuccessful and the property has been totally lost.

It should be noted that a salvor is entitled to his reward for his services even if he acted without the knowledge or consent of the owner of the property, even against his express wish. A salvor has a lien on the property saved and if the property is not in his possession, he can file a suit in a court of law.

Salvage charges are recovered from interests salvaged in the proportion of the actual values of the interests salvaged. Salvage charges incurred in preventing a loss by a peril insured against are recoverable from the insurer as a loss by that peril.

Successive Losses

In ordinary circumstances the underwriter's liability under the policy is limited to the amount insured. But there are exceptions to this general rule, where successive losses are incurred on the same subject-matter on the insured voyage. Such successive losses should distinctly occur separately, each involving the insured in distinct and actual loss.

Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can recover only the total loss. But if the loss has been repaired and then the total loss occurs, the underwriter is liable for both. If there is a particular average loss on ship and the damage has not been repaired and the ship subsequently meets a total loss by a peril not insured against, the underwriter is liable for neither of the two losses. Where there is unrepaired damage, the underwriters are liable for the reasonable depreciation to the ship thereby, provided she is not a total loss before the expiry of the policy.

But suppose a vessel is damaged and the damage is not repaired before the policy covering the vessel expires, and the vessel subsequently meets a total loss under a different policy in the continued voyage. In such a case, the assured is entitled to recover from the latter insurer the total loss and from the former insurer, the amount due for the unrepaired damage.

Where the insurer is liable for sue and labour charges, he has to pay them even if when added to the partial loss—or total loss—incurred subsequently, the claims together exceed the sum assured.

CHAPTER XIX

RETURN OF PREMIUM AND SUNDRY MATTERS

Rate of Premium

Premium is the price for the protection sought for from the insurance company. The premium in marine insurance is generally expressed as a per cent. on the value of the interest insured. In fixing a rate of insurance premium, the calculation cannot be so scientific as in life insurance. The main reason for this is that the classification of risks in life is very simple but it is not so in case of marine insurance. Here the risks differ according to the type of vessel, nature of cargo, nature of the voyage, seasons, routes, etc. Again the maritime perils are of a large variety. Further, the past records available regarding the marine losses are not available in the same amount as for human mortality. Due to these reasons, the calculation of premium though made on above considerations involves some guess-work. In actual practice, a new company will fix the premium rates in conformity with the rates of existing concerns and later on may make adjustments in the light of its own experience. Of course, due to competition there cannot be much difference in the premium rates of the various companies.

Where the assured has transacted directly with the insurer, the liability to pay the premium is direct. If the insurance is effected through a broker, the insurer must look to the broker for the payment of premium.

Return of Premium

Ordinarily the premium once paid cannot be refunded. However, in the following cases the refund is allowed.

(1) By agreement in the policy

The assured may pay the full premium while effecting the insurance but it may be agreed to return

it wholly or partly on the happening of a certain event. In such a case, the premium is returnable accordingly when the event takes place, e.g., special packing may reduce the risk and hence part of the premium is returnable.

(2) For reasons of equity

(i) *Non-attachment of risk.* Where the subject-matter insured, or part thereof, has never been imperilled, e.g., the voyage might not be made or the goods might be 'short shipped.'

(ii) *Undeclared balance of an open policy* may be cancelled and return of premium for short-interest allowed, provided the assured has no further interest to declare within the scope of the policy in question.

(iii) Where the consideration for the payment of the premium is apportionable, and there is a *total failure of any apportionable part of the consideration*, a proportionate part of the premium is, thereupon, returnable to the assured, provided there is no fraud or illegality on the part of the assured or his agents, e.g., insurance may be taken for a voyage in stages, each stage being rated separately. In such a case, if some stages are not completed, the premium relating to uncompleted stages is returnable.

(iv) Where the assured has *no insurable interest* throughout the currency of the risk, the premium is returnable, provided the policy is not attached by way of wagering, e.g., the cargo insured might never have been shipped.

(v) *Unreasonable delay in commencing the voyage* may also entitle the insurer to cancel the insurance by returning the premium.

(vi) Where the assured has *over-insured* under an unvalued policy, a proportionate part of the premium is returnable.

(3) Over-insurance by double insurance

There is said to be over-insurance by double insurance where two or more policies are taken by an

insured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity legally allowed. Where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable, provided that if the policies are taken at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable.

Under-Insurance

Where the subject-matter is insured for less than its value (insured or insurable), it is said to be under-insured and the assured is regarded to be his own insurer for the difference between the assured sum and the value. This has already been discussed.

Bottomry and Respondentia Bonds

In the early days of commercial history when the means of communication were not so rapid, the captain or the shipowner was at times confronted with a peculiar situation when he went short of funds at a foreign port. He could borrow money if he had a high reputation in the foreign country but generally a lender would not lend without security. In such a case, the captain could pledge the ship or cargo as a security by executing bonds. If the bond was executed on the security of ship it was called "Bottomry Bond," but if the cargo was pledged, the bond was called "Respondentia Bond."

Bottomry is derived from the word 'Bottom', which signifies that whole of the ship is pledged. Of course, the money should be borrowed in this manner only when the voyage cannot be continued without this loan and the loan could not be obtained by any other means. Again the loan should be the minimum necessary to reach the destination. The important

feature of this loan is that it is repayable only on the arrival of the vessel at a named port. If the vessel was lost the borrower was discharged from his obligation. Due to this high risk the interest charged on such loans was very heavy. If the loan is borrowed at various ports during the same voyage by executing bottomry bonds, the last lender will have a preference over the previous ones in getting the payment. It is because of the fact that had the last lender not lent, the previous lender could not get anything as the voyage could not be terminated successfully without the last loan.

When the loan is taken on the security of the cargo, the bond to be executed is called 'Respondentia Bond.' For the validity of this bond it is required that the loan should have been taken for the exclusive benefit of the cargo and there was no other means of getting money except by the sale of cargo. If possible, the consent of the cargo-owner should be obtained before taking a loan. The condition for the repayment of this loan is also the safe arrival of the cargo to the port of destination. If the ship fails in way, the loan given will be regarded as bad debt.

However, the bottomry and respondentia bonds simply remind us of the old days and one now seldom hears of loans raised on them.

PART FOUR
FIRE INSURANCE

CHAPTER XX

ORIGIN AND NATURE OF FIRE INSURANCE

Fire Waste

"Fire and people doe in this agree,
They both good servants, both ill masters be."
(Lord Brooke—*Inquisition upon Fame*)

He will be bold who will dispute the tremendous service done to the humanity by fire. To speculate about the conditions of human existence without this great boon of fire is almost an impossible task. But like the dictum that there is no unmixed good in the world, 'Fire is a good servant but a bad master.' So far it is under control, its obedience is beyond question, but once the control is lost it spells untold tragedies and disasters to humanity. Fire is responsible for huge losses of property every year and in spite of the many centuries of progress, mankind is still far from the complete mastery of fire. On the one hand, the fireproof and fire extinguishing appliances are being invented more and more, and, on the other hand, the discovery of new materials, machinery and processes of manufacture and the greater concentration of values which are taking place create conditions more favourable to the inception of fire and, when fire occurs, to its spread. Governments also try to minimise fire waste by enacting various types of legislation regarding construction of buildings, storage of hazardous materials, etc., and by maintaining fire brigades. In spite of all this, fire takes a heavy toll of human property every year.

Causes of Fire

Fire waste is the result of two types of hazard, viz., 'Physical' and 'Moral'.

Physical Hazard. It refers to the inherent risk of fire in the property which may be on account of

the situation, inflammable nature, construction, artificial lighting and heating, lack of extinguishing appliances, etc.

Moral Hazard. The physical hazard depends on the property or its situation while the moral hazard depends upon the man. The property may be wilfully and maliciously set on fire by the owner or somebody else. One may allow the avoidable conditions favourable to the creation or spread of fire owing to carelessness or lack of sense of duty towards the community. In times of trade depression, the claims on account of fire losses increase because the owner of the property can realise more from the loss by fire than by selling the goods in the open market which is very low owing to depression. Such cases of wilful acts of setting one's own property to fire are expressed by the term 'incendiarism'. There may also be cases where third parties out of malice, political situation or religious fanaticism may put to fire the properties of others. Such acts are known by the term 'arson'. Losses by arson are very common in India where the communal riots often break out. Some persons may put fire to the property of others, also with a motive to get reward on giving information about the breakout of the fire or assisting in its extinction. Again the wilful neglect by the assured to maintain proper safeguards for extinguishing fire and his carelessness when the fire has broken out are cases of 'passive dishonesty.'

Thus all the above causes lead to a huge amount of fire waste every year and this feature of moral hazard is peculiar only to fire losses.

Fire Insurance

Thus it has been noted that the fire causes huge losses every year and the state or individual owners by taking various safeguards can try to prevent the fire waste to some extent. But such safeguards can in no way completely eliminate the fire waste and the society as a whole has to bear the losses. Of

course the actual sufferers will be only a few in number, hence the loss to them individually will be very heavy and the rest of the members of the society will bear no loss. But this fact cannot be known in advance as to who will be the actual sufferers in a particular year and hence the horror of loss will loom over the head of every individual. It is just here that an insurance company comes in the picture. It acts as a middleman between all the members of the society who are exposed to the fire risk on the one hand and the members who will be the actual victims of the fire losses on the other. The company will charge the premiums from all the members and make good the losses when they occur. Thus a fire insurance company shifts the burden of fire losses from their actual victims over to all the members of the society. It relieves every individual from the horror of the fire losses to which he is exposed. Each member feels protected against the risk of fire.

Functions of Fire Insurance

From the above, however, it should not be understood that the fire insurance company is able to eliminate the losses by fire. The society as a whole is no gainer by the working of a fire insurance company. Considered economically, the fire waste is dead loss to the community and it would be fallacious to argue that no one suffers so long as there is insurance behind the loss. Really speaking the total loss to the society remains the same and the premiums paid for fire insurance are a part of unproductive tax on all the members of the society to make good the loss of those who really suffered. From the point of view of the insured who actually suffers, the insurance premium is nothing but a contribution towards the loss by fire. The greatest advantage of fire insurance lies in the fact of individual enterprise and security but this does not counteract the fire waste in any way; on the other hand, it actually encourages the dishonest insures to burn their own property and realise its cost value

from an insurance company which would not be possible but for insurance. Of course by the better system of rating and fixing premium according to the actual risk, the insurance does reduce the fire waste to some extent.

Origin of Fire insurance

Like marine insurance, the fire insurance has not a long history. Comparatively it is of late origin and though the efforts were made since long the real establishment of fire insurance came only after the Great Fire which took place in London in 1666. The main cause of its late development was that commerce was not so much developed at that time, and it was only after its growth that the fire insurance received a real fillip. The early companies which started fire insurance based their business mostly on complete guess-work and there was no reliable data available on which could be based the premium rates. Many of such companies came to grief very soon. Of course, there were a few concerns which tried to be more scientific and it is not a little remarkable that some of their rates remain standard even now. Gradually they collected data on the experience as it went on accumulating, and the premium rates became more equitable and scientific. Simultaneously the decisions of law courts also brought the principles of fire insurance to a standard form. With increasing competition the practice of all insurers in the field became gradually standardised and thus was evolved the fire insurance in its present scientific form. However, it should be noted that the fire insurance practice is still not and can never be as scientific as the life assurance because the system of rating the risk is fraught with many complexities and is not so simple as it is in life insurance business.

In India, the fire insurance business is not so much developed as it is in foreign countries and until recently most of the business was in the hands of foreign companies. In recent years, the share of

Indian companies in the total fire business carried in India has increased gradually. Most of the foreign companies working in India have their head offices situated in the United Kingdom.

Fundamental Principles of Fire Insurance

(i) *Indemnity*.—All fire insurance contracts are indemnity contracts. Indemnity is the most essential principle of fire insurance. By the terms of the contract, the insurer undertakes to recompense the insured either by monetary payment or by the replacement or repair of the property damaged, so that the insured remains in the same position financially, as far as the property destroyed is concerned. The principle is based on the simple fact that by being indemnified the insured should not be placed in a better position after the fire than he was before its occurrence. His position by the fact of being insured should be neither better nor worse, but the same.

This principle, that a policy of fire insurance is a contract of indemnity against loss and not to produce gain, has very definite legal support. Brett L. J. once remarked: "The very foundation in my opinion of every rule which has been applied to insurance law is this, namely, that the contract of insurance contained in a marine or fire policy is a contract of indemnity, and of indemnity only."¹ It follows that where the assured has not sustained any loss, he is not entitled from the insurer to anything. And where the loss has occurred nothing more than the actual monetary value of it can be realised. Bowen L. J. also similarly remarked: "It is an ocular illusion to suppose that under any circumstances more may be obtained by the assured than the amount of the loss."²

The main objection for any departure from the strict application of the principle of indemnity is that

1 *Castellain v. Preston* (1883).

2 *Castellain v. Preston* (1883).

the assured will be able to make gain out of the occurrence of a fire and this will result in two evils:

Firstly, the insured will be induced to cause fire by either active or passive means. This tendency will increase the aggregate fire-waste caused to the society. Hence, the society will not only be deprived of a large part of goods and property but its energy which could have been used for other constructive purposes would be wasted in making this loss good. Hence, it would work against public policy if the assured is permitted to make a gain out of the fire insurance. Further, when a fire occurs in the property of an individual, it will not only cause a loss to himself but it may also prove dangerous to the human life and property in the neighbourhood.

Secondly, as a result of the first evil, the total claims by fire will increase or larger amount will be paid for a smaller loss and this will increase the cost of insurance and hence the premiums of the other fellow-insurers will have to be raised. This will defeat the very purpose of insurance.

Measure of Indemnity

The indemnity is limited to the amount for which the premium has been paid and which is specified in the policy. This assured amount is not the measure of indemnity, but it sets an upper limit upto which the loss can be indemnified. The actual amount of indemnity will be the market value of the subject-matter destroyed or damaged by fire at the time and place of the occurrence of fire but it can never exceed the assured amount. Thus, when the actual loss is equal to or less than the assured amount, whole of it will be paid by the insurer; but, if it is more than the assured amount then only the insured sum will be paid and nothing more, because it will be a case of under-insurance and upto the extent of underinsurance the insured himself is regarded to be his own insurer.

However, the above principle does not hold good when the policy is a valued policy. Here the basis of indemnity will not be the actual cash value of the property at the time of its loss but the insured value which is named in the policy when it was taken, e.g., suppose property is insured for Rs. 10,000 and half of the property is destroyed by fire and the market value of the destroyed property is Rs. 8,000 then in case of an ordinary (i.e. unvalued) policy, the insured can claim full Rs. 8,000 as it is less than the insured amount Rs. 10,000. But suppose the policy is a valued policy and the value is the same as Rs. 10,000, then the assured will be paid only Rs. 5,000, though his actual loss is Rs. 8,000, because in a valued policy, no consideration is given to the actual loss. Thus the amount of claim may be greater or less than the actual loss at the time of fire in case of valued policies.

The basis of indemnity will be further adjusted if the 'average clause' is introduced in the policy. It will be discussed later on.

Extent of Indemnity

Insurance does not necessarily give a perfect indemnity but gives sometimes more and sometimes less, as seen in the case of a valued policy. Formerly the meaning of the word 'indemnity' was understood in the sense of material indemnity only, i.e., indemnity restricted to the loss of tangible, material property only. This was based on the idea that if there is any intangible loss also, e.g., loss of rent, profit, etc., it must be borne by the insured so that he will be interested in preventing fire. But it worked as a great hardship on the genuine and honest insured persons. In order to satisfy them, the insurance was extended to cover not only the material loss of property insured but also to cover the "consequential loss", e.g., when a factory is burnt, not only the material loss on account of the destruction of building, plant and stock is covered but the consequential loss of

profits on account of cessation of sales, salaries, taxes, rent, rates, interest, etc. is also indemnified. These days the fire insurance policies are issued which cover both the tangible and intangible losses and it is now generally recognised that the compensation of consequential loss is also within the meaning of indemnity.

The consequences of the principle of indemnity may very briefly be stated as follows :

(a) The insured can claim only when he has actually suffered and the amount of the claim cannot exceed the actual loss. If there is any partial damage the insured can recover only the amount of injury actually sustained or can get the damaged property restored to its original condition. No more than the amount of actual loss can be lawfully recovered, and if more is recovered, the insurer can get the excess back if he paid unawares.

(b) If the insured has recovered from the insurer the amount of his actual loss, he must transfer to the insurer all the rights which he may possess relating to the property or against third party in respect of the loss.

(c) Where the insurance is effected with more than one insurer, the insured is precluded from obtaining more than actual loss from all the insurers combined.

(ii) *Good faith*

In all insurances, it is the insurer's intention to charge a premium commensurate with the risk run. To enable the insurer, therefore, to assess the risk, the insured must supply a detailed information regarding the subject-matter to be insured. For this purpose, the insured has first to fill a printed proposal form which contains a long list of questions regarding the nature of the property and the circumstances affecting the risk. The insured must observe complete good-faith

and is bound to disclose all the information asked for with complete and correct answers. Though the duty to observe good faith lies on both the parties, it is applicable to the assured with special force because of his being owner of the subject-matter. The assured must fully disclose all the facts which are material to the contract whether they are asked in the proposal form or not. A material fact is one which will influence the insurers in their decision as to whether they will accept or decline a risk and, if they accept, in determining the premium. The material facts are: any other insurance on the same property; refusal by other insurer to insure; previous fire on the same premises or in the neighbourhood; materials used in construction of the building; uses to which the building is put; character and structure of surrounding buildings; at present occupied or not; etc., etc. If the assured has not observed good faith or is guilty of concealment or non-disclosure of any material fact, the contract can be avoided by the other party. If a material fact is concealed the contract is voidable and the assured will not be allowed to plead later on that he was unaware that it was a material fact. The onus of proof of concealment rests on the insurer. However, the doctrine of good faith is not one-sided. The insurer has also to disclose such material facts as are within his knowledge or that of his agents and he must draw attention, for example, to any restrictions in his policy.

In practice the risk is accepted by the insurer on the basis of the proposal form if the risk is an ordinary one. But, if the risk involves more complications, the insurer will send his surveyor to assess the risk by examining the property. The insured must correctly answer to the questions of the surveyor and disclose all other material facts within his knowledge.

The observance of good faith is necessary not only during the negotiations of the contract but

throughout the term of the policy and in making of claims. Any change increasing the risk subsequently must be communicated to the insurer. Again the insured or his agents must take all such steps as may be reasonable for averting or minimizing a loss. Once the fire has happened the insured must do his utmost to extinguish it. In such cases he must act as if he was not insured.

However, the insured or the proposer need not disclose the following information in the absence of any enquiry:

(a) any circumstance which diminishes the risk.

(b) facts which are known or reasonably presumed to be known to the insurer, e.g., that which is common knowledge; facts which the insurer in the ordinary course of his business ought to know; or which the insurer ought reasonably to have inferred from the details given to him.

(c) facts as to which information is waived by the insurer.

(d) facts which it is superfluous to disclose by reason of a condition or warranty.

(iii) *Insurable interest*. It is a corollary of the principle of indemnity. An individual must have insurable interest in the subject-matter if he wants to insure it. A person is said to have an insurable interest in the subject-matter of insurance when he stands in such a relation to it as to benefit by its existence or be prejudiced by its destruction. The insured must be interested in the preservation of the subject-matter and if this condition is not fulfilled he does not sustain any loss on its destruction or damage and any compensation to him would be contrary to the principle of indemnity. Only those can recover who have an insurable interest and they can recover only to the extent to which that insurable interest is damaged by the loss. What is insured in a fire policy

is not the bricks and materials used in building the house, but the interest of the assured in the subject-matter of insurance; not the legal interest only but the beneficial interest.¹

A fire insurance policy without an insurable interest is void and no better than a wagering contract. A fire policy is termed as personal contract between the insurer and the insured. The contract does not insure the property but it implies an undertaking to indemnify the insured for any loss which he may suffer by reason of his interest in the property. If the insured sells the property, his interest ceases to exist and hence the insurance comes to an end. If the insurance is to pass to the new owner of the property, the consent of the insurer must be obtained specifically. Thus, a fire insurance is a personal contract and it can be assigned only after the express consent of the insurer has been secured. Thus, in case of fire insurance, insurable interest must exist at both the times—when the insurance is effected and when the claim arises.

The following persons are said to have insurable interest: the owner can insure his property, mortgagors and mortgagees can insure to the extent of their separate interests; a trustee can insure the trust property, a warehouseman can insure his customers' goods, a pawnbroker may insure goods pledged with him and in his custody, a bailee his insurable interest in the goods held by him in trust; an insurance company has insurable interest in the subject-matter insured, etc.

Fire insurance and Life insurance

(a) A fire insurance is a contract of indemnity while a life insurance is not so. Hence, when a claim arises, in the former case only the actual loss caused by fire can be recovered, but in the latter case the whole assured sum is payable on the maturity of policy.

1 *Castellain v. Preston* (1889).

(b) Classification of risks in fire insurance is very complex while in case of life assurance it is quite simple.

(c) In fire insurance, the term of the policies usually does not exceed one year but in life insurance it lasts for a very long period, usually 20 to 30 years.

(d) In case of life assurance, the insurable interest must exist at the inception of the policy; but in fire, it must exist at the time of loss as well. As a consequence of it, a life policy can be assigned to anyone at any time but a fire policy can be assigned only after the consent of the insurer has been obtained.

(e) Fire insurance contains only the element of protection, while life insurance has the element of investment also. Therefore, the life insurance policies acquire surrender value while the fire policies do not.

(f) Unlike life insurance, in fire insurance the moral hazard exists. Very few persons will like to commit suicide for the sake of getting insurance money as they cannot utilise it personally after their death. But the owners of property are under a great inducement to set their properties to fire on account of various reasons.

Fire insurance and Marine insurance

Unlike life insurance, fire and marine insurance contracts have many points of similarity. Both are indemnity contracts and issued for short periods. But their points of dissimilarity are as follows:—

(a) In marine insurance, there exists usually no moral hazard as the shipper is away from his cargo on ship, but the dangers of moral hazard in fire insurance are very great.

(b) In fire insurance, only the actual loss measured by the market value of the property destroyed or damaged by fire at the time of its occurrence can be claimed, no profit can be included in the claim; but in case of marine insurance most of the policies are valued policies which allow a margin of expected

profits to be covered.

(c) The insurable interest in case of a fire policy must exist both at the inception of the policy and at the time of loss, but in case of a marine insurance it is sufficient if it exists only when the loss takes place.

CHAPTER XXI

THE FIRE INSURANCE CONTRACT

Definition of the contract

A fire insurance contract may be defined as 'an agreement whereby one party in return for a consideration, undertakes to indemnify the other party against financial loss which the latter may sustain by reason of certain defined subject-matter being damaged or destroyed by fire or other defined perils up to an agreed amount.' The party undertaking to indemnify is called *the insurer*; the party who is to be indemnified is called *the insured*; the consideration for the contract is termed *the premium*; the defined subject-matter is known as the *property insured*; the sum set forth in the contract is called *the assured sum*; and the document containing the terms and conditions of the contract is known as *the policy*. The contract to be valid must satisfy all the requirements¹ of an ordinary contract and the principles set forth in the previous chapter. Now-a-days, the insurance business is carried on mostly by the insurance companies, and any person desirous of securing protection of his property against fire must approach a fire insurance company.

Definition of "Fire"

According to the above definition of a fire insurance contract, the losses to the property by fire are covered. The meaning of the word 'fire' should be clearly understood in order to make the insurer liable under the contract. For this purpose, a fire must

1 See Sec. 10 of Indian Contract Act.

satisfy two conditions. Firstly, there must be actual fire or ignition; and secondly, the fire must be fortuitous in its nature.

The first condition requires that there must be actual fire or ignition. In a case, Byles J. said: "The expression in the policy we have to construe is 'loss or damage occasioned by fire.' These words are to be construed as ordinary people would construe them. They mean loss or damage either by ignition of the article consumed, or by ignition of part of the premises where the article is; in the one case there is loss, in other a damage occasioned by fire."¹ Loss or damage caused by excessive fire heat cannot be included in 'loss or damage by fire.' All that is necessary to prove in the case of fire insurance is that the loss is caused by fire. The cause of fire is immaterial. Even if the fire is caused by the negligence of the servants of the insured or of himself, the loss is covered. Of course, there should be no fraud or wilful misconduct by the assured. If the proximate cause of loss or damage is fire, the insurer is responsible. But, if the loss occurs not by the actual ignition but by a process resembling fire, it is not regarded to be a loss by fire. Loss or damage by explosion is not a loss by fire. The word 'fire' does not extend to chemical actions, which, though they may correspond in their effect to fire, do not result in actual ignition. Similarly, loss occasioned by lightning without ignition is not a loss by fire; but where lightning results in ignition, the loss caused by such ignition is a loss by fire and can be recovered from the insurer.

The second condition stipulates that the fire should have been accidental and not intentional. Any loss caused by a fire lighted purposely for some use is not a loss by fire if it was intended. But, when property is accidentally burned in an ordinary fire, such as a domestic fire, the loss is covered even if the

1 *Exccrell v. London Assurance* (1867).

fire remains under control. Here, something is burned which ought not to have burned. Similarly, when a fire is purposely lighted but later on it escapes control and causes loss to the property, the loss is a loss by fire and is recoverable under the contract. The object of the contract is to indemnify the insured against accidental loss by fire, and so long as the property is accidentally burnt, the precise nature of the accident seems to be immaterial.

Proposal

When a person wants to insure his property against fire, he approaches a fire insurance company. Sometimes he is invited by the insurer either by advertisement or by agent to insure his property with him. The proposer can make the proposal either verbally or in writing. The proposal is sent by the assured to the insurer giving the necessary description of the property to be insured and the period of insurance. Ordinarily the assured makes his offer by filling up a printed form¹ of proposal obtained from the office of the insurer. The proposal form contains many questions regarding the property and the assured must answer to these questions completely correct. As has already been seen, he must observe utmost good faith and disclose all the material facts, the answers should be given in unambiguous language. The description of the subject-matter of insurance is the basis of the contract for identification as well as for assessing the risk and fixing the premium accordingly.

Acceptance

When the insurer receives the proposal form, he will assess the risk. If the insurance is sought for a private dwelling house, or for building and contents of smaller shops, and other trade premises, he will assess the risk on the basis of the proposal form only. But if the risk is of a larger magnitude and where the

1 See Appendix A.

hazard involved is of a variable or unknown nature, he will send his surveyor to survey the property. Big insurance offices usually keep surveyors who are expert in surveying the properties and can determine the degree of risk precisely. When the surveyor has submitted his report, the insurer will consider the proposal in the light of this report. Sometimes when the proposer is completely a stranger the insurer may also request him to submit an evidence of respectability. This precaution is taken on account of moral hazard in fire insurance. The proposer has to submit a certificate from some known and respectable person about honesty and integrity. When the insurer has decided to accept the risk, he will at once inform the proposer of his acceptance and the contract becomes binding.

Commencement of Risk

In a contract of fire insurance, the risk commences as soon as a binding contract of insurance is concluded although it is open to the parties to the contract to agree as regards the time from which the risk will commence. Such a contract is enforceable notwithstanding the fact that no policy in the usual form had been issued and no premium had been paid. The reason for this rule is, 'that it is very important that there should be prompt insurance in respect of goods against fire risk. Considering how great is the risk to an individual, and how small a premium he has to pay, the great object is to get himself insured against damage by fire, and if the law were otherwise, then no man would be able to effect a prompt insurance against damages by fire.'¹

Of course, the insurer can give his acceptance of the proposal subject to the payment of the premium, and this is the usual practice. In such a case, the risk will commence only when the premium has been paid and not before it. When the insurer has issued a

¹ *Thomson v. Adams* (1839).

policy, whether it contains a condition making the payment of the premium precedent to the right of the insured to claim thereunder, or not, the liability has attached.

Cover Note

When the risk has been accepted unconditionally or subject to the condition of payment of premium, then, after the receipt of the premium the insurer will issue a 'cover note'¹ or 'interim protection note', as it is sometimes called, to the insured. This cover note will cover the property so far the final policy has not been issued as that takes some time to prepare. If a loss occurs before the issue of the policy, the cover note will be sufficient evidence of the insurance and the insurer will be liable under it.

Policy

After some time of issuing cover note the insurer will issue a duly stamped policy which will bear all the terms and conditions of the contract. Any contract of fire insurance comes within the meaning of the word 'policy' and there is no statutory or formal document necessary to make a contract of insurance. In England, a standard form is used which contains printed conditions. It incorporates in it the name and address of the insured, the subject-matter of insurance, the sum insured, the term and the premium. The policy also contains clauses, stipulations and warranties peculiar to the individual contract. Any subsequent alterations in the interest, amount, description of the subject-matter, etc., are also registered in the policy. The terms of the policy will be discussed later on.

Term of Fire Policies

The term of a fire insurance policy depends upon the requirements of an insured. Usually the policies are issued for one year in which case they are called 'Annual Insurances.' Policies issued for a period

1 See Appendix B.

shorter than one year are known as 'short term' policies; and those issued for a period longer than one year are called 'long term' policies. Majority of the policies are annual policies, and very few of 'short term' and 'long term' policies are issued. In a long term policy, the insurer usually inserts a clause reserving to himself the right to bring the premium into line with any alteration in rate which may take place during the term of the policy. Such policies are effected generally for buildings. The premium for short-term policies is slightly more than the pro-rata proportion of the annual charge on account of heavier ratio of expense.

Renewal of Policies

The insurance is terminable at the end of its term by either party. In practice, usually the insurer will issue a renewal notice a few days before a policy falls due advising the insured for renewal of the insurance. The insured can renew his policy by paying the premium within 15 days of the expiry of the policy—these days being known as the 'days of grace'. If the premium has not been paid and the loss occurs on account of fire during the days of grace, the insurer will pay the claim. But if it is proved that the insured has no intention to renew the contract, the insurer is under no liability to meet the claim, e.g., if the insured is found to have approached other insurers during the days of grace for quotations, his intention to renew can be said to have been in doubt, and the insurer can repudiate liability for any loss. However, it should be understood that the giving of renewal notices and allowing the days of grace is not a compulsory obligation on the part of the insurer. No days of grace are allowed for short term policies.

Renewal of a fire insurance policy is a fresh contract dating back to the date of the expiry of the original contract and not the continuation of the pre-existing contract. Hence, the insured should make a

full disclosure of all material facts and intimate of any material change which might have taken place in respect of the risk. The insurer is also free to revise his terms and rates of premium on the renewal. He may increase the rates for risks which have proved to be unprofitable and decrease for those which have improved from his point of view.

Cancellation of Policies

A policy on the expiry of its term may not be renewed. It may be so because the insured does not want to continue and he has not paid premium during the days of grace. In such a case, the policy automatically comes to an end. Sometimes the insurer may not be willing to renew for some reasons and hence in such cases it is customary to give notice to the insured of his intention a week or so before the expiry of the original policy so that the insured may not claim the benefit of days of grace and he may also make his own arrangements for insurance with some other company.

But neither the insured nor the insurer can demand a cancellation of the insurance during the term of the policy. However, if some change has been introduced in the subject-matter or in the circumstances affecting it during the currency of the policy or there has been a breach of condition, the insurer can cancel the contract. The examples of such changes are: where a fresh trade process is carried on involving greater fire hazard, or more hazardous goods are introduced into a risk, etc. When a policy is cancelled on account of these reasons, a pro rata return of premium is invariably allowed in respect of the unexpired term of the policy, though the insurer is under no such legal obligation. Similarly the insured may request for the cancellation of a policy during its term, in which case any return of premium allowed would be less than the pro rata proportion of the annual premium on account of greater incidental expenses.

More than one fire

When there is more than one fire in respect of the same subject-matter insured, the insurer is not bound to pay in all more than the assured sum stated in the policy. Thus the payment of a loss automatically reduces the amount of the policy by the amount so paid, the contract being 'fulfilled' to that extent and if there is any subsequent loss by fire even of the whole property the insured cannot realise more than the balance of insured amount. Of course, if the insured wants, he can reinstate the assured sum to the original amount by paying a fresh premium on a pro rata basis to date of expiry. But the insurer is under no obligation to comply with any such request.

More than one Policy

If the insured has taken insurance for the same subject-matter with more than one insurer he cannot realize more than the actual loss from all the insurers combined. Each insurer will pay his ratable proportion of loss to the property insured against fire. If any one of such policies contains an 'Average Clause' then all other policies will also be subject to it as hereafter mentioned.

Assignment of Fire Policy

Unlike a life policy, a fire policy is not assignable at the option of the insured as it is a personal contract between him and the insurer. The fire insurance policy covers the interest of the insured in the property and not the property itself. Where a fire policy is assigned, the insurer, in the absence of any express contract to do so, is not bound, upon the application of the assignee, to pay him upon the policy. It should be remembered that in a fire insurance the insurable interest must exist both at the inception of the policy and at the time of loss. Therefore, when the property is transferred to some other person, neither the assignor nor the assignee can have a claim on the insurer in case of a loss by fire, because the assignor will

have no insurable interest at the time of loss and the assignee had no insurable interest when the policy was taken. In such a situation the assignee can get protection of the insurance only when there is a novation of contract between him and the insurer by the latter's acceptance of the former contract. Hence, an assignment is valid only when the express consent of the insurer has been secured. Usually, the insurer will signify his consent to an assignment, the only objection will be when the assignee is an undesirable person, because, in such a case the moral hazard to the property increases. Of course, when the interest in the property is transferred by will or through the operation of law, the policy automatically passes to the legal owner of the property.

"Lloyds", by including 'assignment clause' in their policies, appear to allow a fire insurance policy to be assigned to a new owner without the consent of the insurer being first secured.

Kinds of Fire Offices

The insurers are generally the insurance companies which are of two types: Tariff Offices and Non-tariff Offices. Usually the companies form an association which is called 'Tariff Association' and all the member companies of this are called 'Tariff Offices'. The association is formed with a view to prevent undue competition among the tariff offices and standardize the rates of premium and other policy conditions for similar risks. The members of the Association have to charge the same rates prescribed by it and not below them. Most of the insurance companies are Tariff Offices. In India also, the Tariff Association has been formed and most of the fire insurance companies are its members.

The insurance companies which do not join this Association are called 'Non-Tariff Offices'. Their number is of course very small. They can charge any premiums as they like. Some new companies, in order to secure more business, reduce their premium

rates to a level lower than that charged by the Tariff Offices, but their financial stability is generally of a questionable character.

CHAPTER XXII

TYPES OF FIRE POLICIES

The fire policies issued so far were of the general type but since the end of the last Great War in 1918 various modifications and developments have taken place in the scope of the policies which are issued in England. The main reason for the change was that due to keen competition, the offices began to issue policies to meet the varying demands of the insured persons. The following types of policies are in common use.

Valued Policy

A valued policy is one in which the value of the property insured is agreed upon when the policy is effected and is the amount which the insurer undertakes to pay in the event the property is destroyed by fire. Thus the insurer is liable not to indemnify the insured but to pay him a fixed sum when the loss occurs. The amount fixed may be greater or less than the actual market value of the property destroyed by fire at the time of loss. In a valued policy, the measure of indemnity is based on the value of property rather than on the market value of the property destroyed. Therefore, it has been alleged that a valued policy is a departure from the strict principle of indemnity and this is correct also to some extent. Valued policies are not very common in fire insurance.

The valued policies are usually issued on pictures, sculptures, works of Art, jewellery, specified articles

of furniture, and the things not in every day use, the value of which must be decided by experts and whose worth can be determined only with difficulty when the loss takes place. When partial damage occurs, the value is often seriously affected and the only method of settlement is to pay the agreed value, the insurer taking over the salvage.

When a valued policy is issued on household goods it has certain advantages and disadvantages from the point of view of both the insured and the insurer. So far as the insured is concerned he is relieved of proving the value by searching invoices and receipts at the time of loss, and he knows what he will receive. But the preparation of inventory is costly and there is made no provision for any appreciation in value and new purchases and replacements. From the point of view of the insurer, a valued policy is the violation of the principle of indemnity, for household goods may depreciate in value owing to wear and tear or change of tastes and fashions, and, in the event of loss the insurer will have to pay more than the actual loss and this increases the moral hazard. Again there arises always a difficulty to settle the partial losses.

The above objectionable feature can be removed by allowing for a reasonable adjustment for appreciation or depreciation of the property at the time of fire, the insurer's liability not exceeding the total sum insured.

Specific Policy

A specific policy is one where a specific sum is insured upon a specified property and in case of any loss to the property, the whole of the actual loss will be payable by the insurer provided it does not exceed the specified sum. The value of the whole of the property is immaterial. If a person takes out a policy for Rs. 6,000 on a property of Rs. 10,000 and the damage done to the property is to the extent of Rs. 5,000, the assured can realise the whole of loss, viz. Rs. 5,000

from the insurer. Even if the loss be Rs. 6,000, this full amount can be recovered. If the loss is for Rs. 7,000, then only Rs. 6,000 can be recovered. Thus the value of the property insured has no relevance in arriving at the measure of indemnity in a specific policy and the assured sum sets a limit up to which the loss can be made good. Hence, the specific policy does not penalise under-insurance except where total loss occurs. If more than one specific policy exists, the loss is distributed pro rata to the aggregate amount insured.

Average Policy

A policy containing an 'Average Clause' is called an Average policy. Unlike a specific policy, this policy penalises under-insurance and the measure of indemnity is determined with reference to the value of the property insured. If the policy is taken for an amount less than the actual value of the property, the insured will be deemed to be his own insurer for the amount of under-insurance and the insurer will pay only such proportion of the actual loss as his insurance amount bears to the actual value of the property at the time of loss. Thus if a person insures his property for Rs. 10,000 and the loss occurs for Rs. 6,000 and suppose the value of property insured happens to be Rs. 15,000 at the time of loss, the insurer will pay only the ratable proportion which will be arrived at as follows:—

$$\begin{aligned}\text{Claim} &= \frac{\text{insured amount}}{\text{value of property}} \text{ of actual loss} \\ &= \frac{10,000}{15,000} \text{ of Rs. } 6000 = \text{Rs. } 4000.\end{aligned}$$

Thus the insured has to suffer the loss of Rs. 2,000 himself on account of under-insurance. Of course had the insured amount been equal to the value of the property or more than that, there would have been no

underinsurance, and the insured would have been able to recover the total amount of loss, viz., Rs. 6,000 in the above case. Thus the average clause is operative only in case of an under-insurance.

Floating Policy

A floating policy or a 'floater' is a policy taken to cover one or several kinds of goods lying in different localities under one sum for one premium and in relation to the same owner. Such policies are specially taken by big manufacturers or traders whose merchandise might be lying in parts at warehouse, godown, port or railway station, etc. It is very difficult for the owner of such goods to take a specific policy for each part of the goods because the quantities of the goods deposited in each will fluctuate from day to day, some being increased, and others decreased, dependent upon sales or consumption or consequent removal and replacement or augmentation by fresh imports. The owner can take one floating policy for all the goods and the insurer will fix the average rate. The average rate of premium is ascertained by taking into account the total premium payable had the property been insured by specific policies for sums insured representing the stocktaking values in each separate location and then finding out an average of the total on a percentage basis. An annual revision of the rate is, of course, necessary. A floating policy usually contains the 'average' and 'marine' clauses. The former is meant to penalise the under-insurance, while the latter provides that if any goods under the policy were covered under a marine policy against fire, this policy would be inoperative and the assured can recover loss only from the marine insurance company.

Excess Policy

The businessman may cover his stock under one specific policy but usually the difficulty arises as to for what amount he must take the insurance because his

stock fluctuates from time to time. If he takes the policy for the highest possible amount to which his stock may go, he will have to pay a high premium rate for the whole year; on the other hand, if he takes insurance for a lower amount, the actual loss may be higher and he may not be fully indemnified when the loss occurs. Therefore, in such a case he will take two policies on the same stock—one policy for the amount below which the stock never goes. This he can find out from his past experience and for the balance he will take the second policy, e.g., when a merchant knows that his stock never falls below Rs. 10,000, but at times may go up to Rs. 15,000, he can take one policy for Rs. 10,000 and the other for Rs. 5,000. The former policy is called the "First Loss Policy" and the latter, the "Excess Policy". Thus the 'First Loss Policy' is applied to a fire policy covering stock for an agreed sum insured, which represents only part of the value at risk, the balance of value being covered under the 'Excess Policy.'

The actual value of the excess stock is declared every month. The monthly average of these declarations is taken out to determine the average amount at risk and the amount of premium is regulated from these declarations. It should be noted that the probability of the insurer being called upon to pay a loss under an excess policy is more remote than under a First Loss Policy and hence the premium rate under the former is always lower than that under the latter.

Declaration Policy.¹

The above type of policy does not fully meet the requirements of a merchant whose stock fluctuates from time to time, because if the amount of excess stock exceeds the sum set in the excess policy the merchant will not have a full cover owing to average condition. Again, if the First Loss Policy is also made subject to average condition, then the assured will al-

¹ See Appendix C.

ways be at a loss. In such a case the declaration policy will give better protection.

A declaration policy is issued for a sum insured up to which the maximum value of stock may go at any time. This amount is the largest amount at risk during the year and indicates the maximum liability of the insurer. The premium is calculated in the ordinary manner on this sum and a provisional payment of the proportion of the premium, usually 75 per cent, is paid in the beginning of the contract. At regular intervals, usually monthly, the insured is required to furnish a declaration of the amount then actually at risk; this may be the value on a particular day or the highest amount at risk since the last declaration was made. The declaration must be made on a specified day or within the next 14 days, otherwise the sum insured will be deemed to be the declaration value. At the close of the year of insurance an average is taken of the twelve monthly declarations and the premium actually payable is calculated at the agreed rate on the average. If this premium exceeds the provisional premium paid at the beginning of the year, the excess will be charged to the insured; if it is less a return is allowed. Generally it is stipulated that the maximum return allowable is one-third of the provisional premium. A declaration insurance is generally subject to average but it is of little significance as there is no temptation to the insured for under-insurance.

It should be clearly borne in mind that the amount at risk is always the maximum amount fixed in the beginning, and the monthly declarations do not vary the liability, they are merely part of a device to ascertain the final premium. The amount of the declaration offers scope for fraud, for the insured may under-declare the values of his stock at risk and thus a lower premium may be paid. For this reason the insurance companies restrict the issue of declaration policies to the concerns of repute.

Adjustable Policy

In the case of a declaration policy the insurer is at the mercy of the unscrupulous insured who may put the insured amount at unduly inflated figure. By doing so he does not lose anything as the excess premium is refundable at the end of the year and he may put fire to the property. This danger is avoided in an 'Adjustable Policy'. It is issued for a definite term on the existing stock. The premium is calculated in the ordinary manner and paid in full at the inception of the policy. Whenever there is any variation in the value of the stock, the insured informs the insurer. On receipt of this information, the policy will be suitably endorsed and the premium will be adjusted on a pro rata basis. The variation in the sum insured would apply from the date admitted by endorsement on the policy. The premiums are usually settled in account at the expiry of the policy.

The difference between the declaration and the adjustable policy is very clear. In the former, the insurer's liability is the insured amount and the periodical declarations have no direct bearing on the measure of indemnity. But in an adjustable policy, the insurer's liability is only the value of the last declaration made. Hence, the declaration policy provides a good margin of safety. In declaration policy, there is nothing to prevent the insured from taking out an insurance for double the amount he anticipates to be at risk, even then the final premium payable will not be effected as he will get the refund back. It is not possible in an adjustable policy where the premium is payable on the actual amount of declaration, e.g., a merchant takes a declaration policy on his stock for Rs. 20,000 on 1st January, 1947. Suppose the declaration is made for Rs. 15,000 on 1st March, 1947, and after 15 days of this declaration the stock is destroyed by fire and the loss is estimated to Rs. 19,000. In this case the insured will be able to recover the full loss Rs.

19,000 from his insurer though he will have to give an explanation as to why the declaration was made at such a lower figure just before 15 days. Had the policy been an adjustable one in the above case, the insured would have been able to claim Rs. 15,000 only, the amount of last declaration.

Maximum Value with Discount Policy

Under this policy, the insurance is taken for the maximum amount of the stock for the year and the full premium is paid. The assured has not to make any periodical declarations or adjustments during the year. At the end of the year one-third of the premium paid is refunded as a consideration of the variations in value during the year. Thus it does away with the botheration of declarations and serves a rough and ready method of coverage for maximum amount. It is confined to certain types of commodities only according to customs of the trade. However, the amount of discount is only arbitrary and may be inequitable to either party to the contract.

Reinstatement Policy.¹

Under the terms of the ordinary policies, whenever a loss arises on the property by fire, the measure of indemnity is the market value of the subject-matter damaged or destroyed. In case of building or machinery, the actual loss is arrived at by deducting the regular depreciation from the original cost of it. Thus the amount of indemnity will be far less than the amount to be spent in reinstating the property destroyed or damaged. In order to meet the demand for a full coverage, the "reinstatement" or "replacement" policies have begun to be issued. According to a 'reinstatement policy', the basis of settlement in the event of destruction is the cost of rebuilding the premises, or in respect of plant its replacement by similar machinery in a condition equal to but not better or more

1 See Appendix D.

extensive than its condition when new. Where the property is damaged, the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new. Where the property insured is damaged or only partly destroyed, the liability of the insurance company cannot exceed the cost which would have been incurred if such property had been totally destroyed.

The insurer will not pay beyond the actual value of the property until the cost of reinstatement has been incurred, i.e., the payments on a reinstatement or replacement basis shall be made only after the expenditure has actually been incurred. The reinstatement insurance is subject to average, the basis of valuation for the purposes of average being the cost of reinstatement.

As the insured gets the new property instead of the old, the policy is also called "New Lamps for Old" policy. Such policies are issued only on buildings, plant and machinery, but not for stock, merchandise or materials. The demand for such policies arose only after the last Great War when the prices of the new buildings or machinery had soared up very high.

Comprehensive Policy

The fire insurance companies also issue policies of a comprehensive nature to householders and house-owners. But by the word 'comprehensive', it should not be understood that every type of risk is covered. It requires a careful study of the conditions of the policy which mention many exclusions and limitations. Such policies are beneficial to the insured and a usual source of additional premium income to the insurers. Usually the risks covered are fire, explosion, lightning, thunderbolt, aircraft, riot, civil commotion, strikes, labour disturbances, burglary or housebreaking, loss of rent up to a certain limit, insured's legal liability for accidents to servants, liability to public

for damage to property or personal injury caused by defects in the property insured upto a specified limit, etc., etc. Such a policy is also called "All Insurance Policy".

Sprinkler Leakage Policy

In many of the buildings sprinklers are installed which automatically operate when there is fire. Sometimes there may be accidental leakage of water and it may damage the building or its contents or both. Hence, to cover such a loss the "Sprinkler Leakage Policies" are taken.

Blankete Policy

This policy is issued to cover all contents in one insurance without the customary divisions between fixtures, machinery and stock, and extending to other properties lying in the insured's premises without regard to separate buildings. Such a policy is not of much benefit to the insured and is detrimental to the best interests of the business.

Consequential Loss Policy

An important development in connection with fire insurance is the issue of policies indemnifying the businessman against consequential loss following the outbreak of fire. The purpose of the policy is to indemnify the insured against financial loss which he may sustain due to the interruption of his business following a fire. The policy is called "Consequential Loss" or "Loss of Profits" policy.

Under the simplest form of this insurance, the measure of indemnity is a specified percentage of the amount payable under an ordinary fire policy in respect of a material loss. However, this percentage has no true relationship to the actual loss of profits sustained, except in a few cases. The more satisfactory method is to pay to the insured an amount representing (i) Loss of Profits based on a reduction in turnover

or output, and (ii) increased cost of working in maintaining the business on its pre-fire level.

Such policies were condemned in the beginning as a departure from the principle of indemnity but any fears that existed have proved to be unfounded and consequential loss insurance is now widely underwritten. However, its protection remains restricted to large businesses and industrial concerns and it has not found favour with small traders who need it most.

CHAPTER XXIII

THE POLICY AND ITS CONDITIONS

Standard Form of Policy

In England there is no statute law relating to fire insurance. Hence, the fire insurance principles and their practice are governed by the conditions contained in the policy. Legally no particular form of insurance policy is necessary. The standard form used at present is the outcome of several vicissitudes in the past. In the beginning, the policy conditions were few and were in the nature of information only. With increase in the demand in the nineteenth century, fresh conditions were introduced. But this tendency to increase the conditions grew so formidable that one would require courage to go through them all. As a reaction of it they began to be curtailed, so much so that a leading office issued a 'conditionless policy'. This title is quite misleading as no contract can be conditionless. Generally, the need was felt to have a common form of policy, and the leading companies got together and agreed on a code of essential conditions

embodied in a common form known as the 'Standard Policy'.¹ This policy has been adopted by majority of the offices since 1922 and has the merits of simplicity and uniformity.

Wordings of the policy

The preamble to the policy sets forth the agreement between the insurer and the insured subject to the conditions of the policy. Payment of the premium as consideration of the contract is a condition precedent to liability. The insurer undertakes to pay to the insured the value of the property at the time of its destruction or the amount of the damage done, or at his option, to reinstate or replace the property or any part thereof. The agreement is subject to the proviso that the insurer's liability shall not exceed the sum set opposite each item or, in the whole, the total sum insured.

The final clause provides for the renewal of the policy which limits the liability of the insurer to any term in respect of which the insured shall have paid and the insurer shall have accepted the premium in renewal of the policy.

Then follows the schedule which contains the name of the insured, the property insured with columns for Sum Insured and Total Sum Insured; period of insurance and premium.

Perils insured

The preamble of the Standard form of policy also contains the perils insured against, stated in the following words:

- (1) Fire (whether resulting from explosion or otherwise), not occasioned by or happening through
 - (a) Its own Spontaneous Fermentation or Heating or its undergoing any process involving the application of heat,

¹ See Appendix E.

(b) Earthquake, Subterranean Fire, Riot, Civil Commotion, Foreign Enemy, Military or Usurped Power, Rebellion, or Insurrection,

(2) Lightning,

(3) Explosion of Boilers used for domestic purposes only,

(4) Explosion, in a building not being part of any Gas Works, of Gas used for domestic purposes or used for lighting or heating the building.

Thus it is clear that the policy provides protection in respect of loss or damage by three perils, viz., Fire, Lightning and Explosion with certain exceptions. Regarding the first peril, viz., *fire*, it has already been observed that to constitute fire, there must be actual ignition and the fire must be accidental. Again, the fire should not be caused by its own spontaneous fermentation or heating or its undergoing any process involving the application of heat. The exceptions contained in sub-section (a) relate to causes dependent upon inefficient workmanship and could be avoided if proper care had been taken. Sub-section (b) relates to excepted perils which might cause widespread devastation and thereby involve the insurers in serious financial losses. The excepted perils can be covered by payment of an extra premium.

The second peril insured against is *Lightning*. Fire caused by lightning is covered under the first peril—'Fire'. Hence, any damage other than fire damage caused by lightning is included under this peril.

The third and fourth perils relate to *explosion* of domestic boilers, of gas used for domestic purposes or lighting or heating but not for trade or manufacturing purposes.

The burden of proof that the loss was caused by any of the perils insured against lies on the insured.

Policy Conditions

Having considered the wording of the preamble of Standard Policy, we now come to the conditions of it. The conditions must be fully complied with to make the insurer liable under the contract. These conditions may or may not be incorporated in the policy. The latter type of conditions are called the *implied* conditions, while the former are called *express* conditions. The following are the implied conditions.

(1) That the insured has an insurable interest in the property insured.

(2) That such property exists at the time policy was effected.

(3) That when a fire occurs the property damaged is the property originally intended to be insured.

(4) That the insured observes good faith towards the insurer (a) in making the proposal and (b) in connection with any claim.

The first three implied conditions relate to the principle of indemnity, while the fourth one relates to the principle of good faith. These implied conditions can be modified or altered by the express terms of the contract.

The express conditions are those which are incorporated or expressed in the policy. These express conditions are again of two types: General and Special. The 'general' conditions are printed in the body of the policy itself and are common to all types of contracts. The 'special' conditions are applicable to a specific contract only and are written or typed on the policy or may be embodied in a policy by reference to a printed slip attached. In case of any ambiguity between these two types of conditions, the special condition overrides the general condition. In all, the express conditions are eleven in number given as follows :

- | | |
|--------------------|-----------------------------------|
| 1. Misdescription. | 7. Insurer's Rights after a fire. |
| 2. Alteration. | 8. Contribution and average. |
| 3. Exclusions. | 9. Subrogation. |
| 4. Claims. | 10. Warranties. |
| 5. Fraud. | 11. Arbitration. |
| 6. Reinstatement. | |

The first, second and fifth conditions relate to the principle of good faith; sixth and ninth relate to principle of indemnity; second relates to personal nature of the contract; eighth relates to the principle of contribution amongst co-insurers; tenth arises out of anomaly in law as to warranties; third refers to the limitations of the contract; and fourth, seventh and eleventh deal with procedure in event of loss.

We will now examine these express conditions, one by one, in the order given above, setting out the standard wording in each case.

Condition 1. Misdescription

This policy shall be voidable in the event of misrepresentation, misdescription or non-disclosure in any material particular.

This condition is a reiteration of the implied condition of good faith, but modifies it. According to the implied condition of good faith, any material misrepresentation or non-disclosure renders the contract void at Common Law, but this condition states that in such a circumstance the policy will be voidable, i.e., to be set aside at the option of the insurer. Even if the misrepresentation relates to a part of the policy only, it will render the whole contract voidable, for a breach of good faith cuts at the root of the whole contract.

However, in the wording of this condition the governing word is "material". Any misrepresentation, misdescription or omission must be material. Usually the questions asked to the insured at the time

of filling up the proposal form are the material questions, specially those relating to the past losses sustained on the property, refusal by any insurer to pay claim, refusal for renewal, etc.

Condition 2. Alterations

This policy shall be avoided with respect to any item thereof in regard to which there be any alteration after the commencement of this insurance.

(1) by removal; or

(2) whereby the risk of destruction or damage is increased; or

(3) whereby the insured's interest ceases except by will or operation of law, unless such alteration be admitted by memorandum signed by or on behalf of the company.

This condition provides that any changes during the currency of the policy cannot be introduced without the consent of the insurer because the risk to be run will be different from the risk intended to be run. The changes dealt with are of three types:—

(a) *Removal.* By removal of the property the risk may increase and hence the consent of the insurer is necessary, otherwise he will be no longer responsible for any loss arising in relation to the property removed, e.g., if the furniture from an ordinary private house is removed to a cabinet factory without the insurer's consent, the risk increases several times in the place. For such a removal, the insured must inform the insurer who may refuse to cover the furniture in the new place because he has already covered a sufficient risk there and does not want to extend the risk in one place. Or the insurer may agree to the alteration but only after charging extra premium for the extra risk.

(b) *Increase in Risk.* Similarly, if the alteration amounts to an increase in risk the insurer can avoid the

policy in respect to the item altered. Here, also, the consent may be obtained after paying extra premium, if the insurer agrees. If the insurer is not prejudiced by alteration, or if the enforcement of the condition works as a great hardship on the insured, the insurer will usually accommodate the insured either by waiving his right or by charging extra premium depending on the circumstances of an individual case.

(c) *Change of Interest.* The fire insurance contract is a personal contract between the insured and the insurer, hence the interest in the property cannot be transferred to any third party without the insurer's consent. The assignment of a fire policy will be valid only when it has been made after the express consent of the insurer has been obtained. Usually, the insurer gives his consent to an assignment except where the assignee is unfavourably known to him. But where the interest in the property changes on account of will or operation of law, the cover continues and the insurer will still be liable though his consent has not been obtained.

The difficult position is created when the insured has contracted to sell his property to some third party but the sale has not been completed at the time of fire. As a result of these two actions the interests of neither the vendor nor the purchaser would appear to the covered after signature of the contract and pending delivery of the deeds. To remove this confusion, the practice of all fire offices is now, by inserting an "optional memorandum", to hold both parties covered for their respective interests pending completion of purchase. When the sale is completed, the policy is given with the deeds and then sent to the insurer for endorsement, the assignee paying the assignor the amount of premium unexpired to date of renewal. Usually, this memorandum is confined to private house policies but may be extended to other buildings as well.

Condition 3. Exclusions

This policy does not cover:

- (a) Destruction or damage by explosion (whether the explosion be occasioned by Fire or otherwise) } except as stated on the face of this Policy.
- (b) Goods held in trust or on commission, money, securities, stamps, documents, manuscripts, business books, patterns, models, moulds, plans, designs, explosives. } unless specially mentioned as insured by this Policy.

(c) Destruction of or damage to property which, at the time of the happening of such destruction or damage, is insured by, or would, but for the existence of this policy, be insured by any Marine Policy or Policies, except in respect of any excess beyond the amount which would have been payable under the Marine Policy or Policies had this insurance not been effected.

This clause should be read in conjunction with the perils insured against given in the preamble to the standard form which have been discussed in the beginning of this chapter. The sub-clause (a) of this condition excludes any loss caused by explosion except as stated on the face of the policy. Sub-clause (b) excludes certain properties which are ordinarily not covered under the policy. Any of such excluded properties can be included in the policy by specifically mentioning it there but it is done so only after the agreed extra premium has been paid by the insured. In such a case, it will also be agreed as to how the claim will be settled in case a loss arises.

The sub-clause (c) is known as the Marine Clause; it requires a marine policy to contribute first to any loss covered by the fire policy.

Condition 4. Claims

On the happening of any destruction or damage, the Insured shall forthwith give notice thereof in writing to the company and shall within thirty days after such destruction or damage, or such further time as the company may in writing allow, at his own expense deliver to the company a claim in writing containing as particular an account as may be reasonably practicable of the several articles or portions of property destroyed or damaged and of the amount of destruction or damage thereto respectively having regard to their value at the time of the destruction or damage together with details of any other insurances on any property hereby insured. The insured shall also give to the company all such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and of any matters connected therewith. No claim under this policy shall be payable unless the terms of this condition have been complied with.

This condition lays down the procedure to be followed by the insured in connection with claims. It is also emphasized in the last sentence that the insurer shall not be liable for any claims unless these terms are complied with. The insured must give immediate written notice of any destruction or damage. This must be followed within 30 days by a written claim giving full details of the property affected and of the amount of damage done. Particulars regarding any other insurance on the same property should also accompany the claim. The time may be extended by the insurer where there is a reasonable case for it. Further, the insured must furnish all reasonable proofs and information required together with a statutory declaration as to the truth of the claim or any matters connected therewith, if required. Such a declaration is, however, rarely

required. It should be noted that the expenses of making the claim fall on the insured and are not covered by the policy.

Condition 5. Fraud

If the claim be in any respect fraudulent or any fraudulent means or devices be used by the insured or anyone acting on his behalf to obtain any benefit under this policy or if any destruction or damage be occasioned by the wilful act or with the connivance of the insured, all benefits under this policy shall be forfeited.

This condition states that fraud will forfeit all benefits under the policy. The main underlying ideas are two in this condition. Firstly, a claim of a fraudulent nature will avoid the policy. An over-valuation is not always fraudulent but it would be taken to be so if the claim was grossly in excess of the actual value of the property. Similarly, if the insured deliberately included into his claim one article which he never possessed, the claim would be fraudulent.

The second idea relates to the incendiarism or arson committed by the insured or by any one else with his connivance. This will also avoid the policy. These acts mean a definite breach of the principle of utmost good faith and absolve the insurer from any liability under the policy. In practice, the insurers seldom make use of this condition as it is very difficult to prove that the fire was caused by the wilful act of the insured or by his consent. In such cases, they avoid the liability on the ground of the technical breach of some other condition. Due to this, the insurers are criticised that they evade claims on minor technical grounds.

Condition 6. Reinstatement

If the company elect or become bound to reinstate or replace any property the insured shall at his own expense produce and give to the company

all such plans, documents, books and information as the company may reasonably require. The company shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend in respect of any of the items insured more than the sum insured thereon.

The preamble of the policy provides for a cash payment or for the reinstatement or replacement of the property in the event of loss and this condition governs such reinstatement by the insurer. Usually the monetary payment is much simpler and seldom has any attendant complications. But, occasionally a settlement is not arrived at on the basis of cash compensation and in that case the only solution of exact indemnity remains the reinstatement of the property lost. If the insurer has once exercised his option to reinstate, he cannot subsequently withdraw and offer a cash settlement.

The condition requires that the insured must at his own expense produce all plans and information, as may be reasonably required in order to enable the insurer to reinstate. Again it is also provided that the insurer is expected to reinstate as reasonably as possible and not exactly, he cannot be compelled to expend more than the sum insured.

Condition 7. Insurer's Rights after a Fire

On the happening of any destruction or damage in respect of which a claim is or may be made under this policy, the company and every person authorized by the company may, without thereby incurring any liability, and without diminishing the right of the company to rely upon any conditions of this policy, enter, take or keep possession of the building or premises where the destruction or damage has happened, and may take possession of or require to be delivered to them any of the property hereby insured and may keep possession of and deal with such property for

all reasonable purposes and in any reasonable manner. This condition shall be evidence of the leave and licence of the insured to the company so to do. If the insured or any one acting on his behalf shall not comply with the requirements of the company or shall hinder or obstruct the company in doing any of the above-mentioned acts, then all benefit under this policy shall be forfeited. The insured shall not in any case be entitled to abandon any property to the company whether taken possession of by the company or not.

This condition gives the insurer on the occurrence of a fire and before a claim is made, the right to

- (1) enter and take possession of a building where property insured has been damaged;
- (2) take possession of or require delivery to him of insured property damaged;
- (3) keep possession of, for a reasonable time, and deal with for all reasonable purposes, all such damaged property.

Any action which the insurer takes under this clause cannot be regarded as an acceptance of liability. The above rights are necessary to minimize the damage by fire and to enable the insurer to make enquiries concerning the origin of fire and to ascertain the degree of damage sustained. All benefit under the policy is forfeited if the insurer is hindered or obstructed while exercising his rights under this condition.

The insured cannot abandon property to the insurer and insist that the claim be paid in full. It is expressly stated so in the condition.

Condition 8. Contribution and Average

If at the time of any destruction of or damage to any property hereby insured, there be any other insurance effected by or on behalf of the insured covering any of the property destroyed or damaged, the liability of the company hereunder shall be limited

to its ratable proportion of such destruction or damage.

If any such other insurance shall be subject to any condition of average, this policy, if not already subject to any condition of average, shall be subject to average in like manner.

If any other Insurance effected by or on behalf of the Insured is effected to cover any of the property hereby insured, but is subject to any provision whereby it is excluded from ranking concurrently with this policy either in whole or in part or from contributing ratably to the destruction or damage, the liability of the company hereunder shall be limited to such proportion of the destruction or damage as the sum hereby insured bears to the value of the property.

The *first* part deals with the principle of contribution amongst various insurers whose policies apply jointly to the property destroyed or damaged. It is based on equity. It states that if there are any other insurances in force covering the property destroyed or damaged or any part thereof, the liability of the insurer is limited to a ratable proportion of the loss. In the absence of this clause, an insured could recover the whole of the partial loss from any one insurer leaving him to collect the proper contributions from the other insurers. No doubt, the final result would have been much the same whether the contribution condition was inserted or not, but its inclusion is a great administrative convenience and simplifies the claim settlements. The ratable proportion of each insurer is arrived at by dividing the sum insured under his policy by the total insured sum of all policies on the risk. The contribution of the insurer could then be obtained by multiplying the loss by the proportion so obtained. Suppose a person insures his house and furniture both under two policies—one with A for Rs. 10,000 and the other with B for Rs. 4,000,

each policy covering both the house and the furniture. Such policies are called concurrent policies. Now suppose the loss is for Rs. 9,000, the contribution will be as follows:—

A would pay $\frac{10000}{14000} \times 9,000 = \text{Rs. } 6,429.$

B would pay $\frac{4000}{14000} \times 9,000 = \text{Rs. } 2,571.$

In the above case, there is no difficulty and the above contributions will be paid by A and B. But the position is not so simple when the policies are only partly concurrent. In the above case, suppose A's policy covers house and furniture for the same amount and B's policy covers only house for the same amount and the loss is, say, Rs. 8,000 on house and Rs. 1,000 on furniture. In this case, the contribution of the insurers will differ according as the loss is made good first on house or on furniture. If the loss is made good first on house, the contribution will be as follows:—

House

A will pay $\frac{10000}{14000} \times 8,000 = \text{Rs. } 5,714.$

B will pay $\frac{4000}{14000} \times 8,000 = \text{Rs. } 2,286.$

Furniture

A will pay the total loss Rs. 1,000.

Thus, in all, A will pay Rs. 6,714 and B will pay Rs. 2,286.

But if furniture is taken first the contribution will be as follows:

Furniture

A will pay total loss Rs. 1,000.

House

Now the amount of risk under A's policy remains Rs. 9,000 only.

A will pay $\frac{9000}{13000} \times 8,000 = \text{Rs. } 5,538.$

B will pay $\frac{4000}{13000} \times 8,000 = \text{Rs. } 2,462.$

Thus, in all, A will pay Rs. 6,538 and B will pay Rs. 2,462.

It will be seen that if house is taken first, A will have to pay more and B less. But there is nothing to prove as to which method is more equitable. The usual practice is to take the mean of the two methods. It is called the 'mean method' or the "method of independent liability-for-payment-of-the-loss-in-question." According to this method, the liability under each policy is taken to mean full liability without reference to the amount of loss. When this method is applied, the contribution in the above case will be—

The liabilities of A and B in respect of house independent of each other's existence are:

If A was the only insurer, his liability for loss would have been Rs. 8,000.

If B was the only insurer, his liability for loss would have been Rs. 4,000.

∴ A's contribution would be $\frac{3000}{12000} \times 8000 = \text{Rs. } 5,333$

B's contribution would be $\frac{4000}{12000} \times 8000 = \text{Rs. } 2,667$

Regarding the furniture, the liability of A would have been Rs. 1,000 on similar basis.

Hence, in all A would pay Rs. 6,333 and B would pay Rs. 2,667.

The *second* part imports average into a non-average policy. It states that where the loss is apportioned among different insurers by way of contribution, it will be made on the basis of average for all policies if one of the policies contained the average clause. It enables all insurers to contribute on an equal footing. The average clause in fire insurance penalises an under-insurance by a corresponding underpayment of loss. The condition states that if the property insured shall at the breaking out of any fire be collectively of greater value than the total sum insured, then the insured shall be deemed as being his own insurer for the difference, and shall bear a ratable share of the loss accordingly. This condition is of significance

only when there is underinsurance and there is partial loss. Suppose a person takes a policy on his stock for Rs. 10,000 with A and Rs. 5,000 with B, and the loss occurs for Rs. 9,000. Now if the value of the stock at the time of loss was found to be Rs. 20,000, the insured is underinsured to the extent of Rs. 5,000. Hence he can realise, in all, only $\frac{15,000}{20,000}$ of the loss Rs. 9,000, i.e., $\frac{3}{4}$ of Rs. 9,000 which is Rs. 6,750. A will pay $\frac{10,000}{20,000}$ of Rs. 6,750, i.e., Rs. 4,500 and B will pay $\frac{5,000}{20,000}$ of Rs. 6,750, i.e., Rs. 2,250.

Thus the insured will have to suffer the balance of Rs. 2,250 himself as he has not insured for Rs. 5,000. The above position would hold good whether both the policies included the average clause or any one of them. In the absence of the average clause from both the policies, the insured would have recovered the full loss Rs. 9,000; Rs. 6,000 from A and Rs. 3,000 from B.

The *third* part imports average clause in contribution with 'excess' policy. The businessmen, in order to get advantage of lower premium, split their insurance in two parts; the first is called the 'first loss' insurance and the second is called the 'excess' insurance. The latter is responsible only when the loss exceeds the cover under the first and it can be secured at a lower rate. Therefore, this clause imports an average in the 'first loss' policy and counteracts the effects of any advantage due to excess policy. The following illustration will make it clear. A merchant has a stock for Rs. 40,000. He takes a first loss policy for Rs. 30,000 and an excess policy for Rs. 10,000. Suppose the loss is Rs. 32,000. In that case ordinarily he can realise under the 'first loss' policy Rs. 30,000 and Rs. 2,000 under the excess policy. But when this clause introduces the average in the policy, the insured can realise under the first loss policy only $\frac{30,000}{40,000}$ of Rs. 32,000 = Rs. 24,000; and under the excess policy he can realise Rs. 2,000 provided it is not subject to

average. If the excess policy is also subject to average he can realise under that only $\frac{20000}{40000}$ of Rs. 32,000 = Rs. 1,600.

Thus this clause discourages an excess policy and thereby prevents unfair methods of competition.

Condition 9. Subrogation

Any claimant under this policy shall at the request and at the expense of the company do and concur in doing and permitting to be done all such acts and things as may be necessary or reasonably required by the company for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the company shall be or would become entitled or subrogated upon its paying for or making good any destruction or damage under this policy, whether such acts and things shall be or become necessary or required before or after his indemnification by the company.

This condition is a reiteration of the principle of indemnity. It states that the insured is precluded from obtaining more than an indemnity. When the insurer has indemnified the insured against a loss, the insured must transfer all the rights regarding the property destroyed or damaged against any third party to the insurer. The insured cannot recover from the insurer as well as the third party. Where the insured has been indemnified by the insurer and then recovers from the third party, the insurer can claim the return of the sum he has paid. The insured may have his rights against the third party by reason of negligence, law or agreement. In such cases, the insurer is subrogated to all the rights of the insured against third parties and recover from them the amount of their liability.

The insured is bound to give all such facilities to the insurer which the latter may require in enforcing his rights against third parties. Any action taken by

the insurer is generally in the name of the insured, but the cost is to be borne by the insurer. Amounts recovered by the insurer become his property subject to the right of the insured to be fully indemnified.

Condition 10. Warranties

Every warranty to which the property insured or any item thereof is or may be made subject shall from the time the warranty attaches apply and continue to be in force during the whole currency of this policy, and noncompliance with any such warranty, whether it increases the risk or not, shall be a bar to any claim in respect of such property or item; provided that whenever this policy is renewed a claim in respect of destruction or damage occurring during the renewal period shall not be barred by reason of a warranty not having been complied with at any time before the commencement of such period.

This condition states that every warranty attaches during the whole currency of the policy, and if during this period a warranty has not been complied with, the insurer will not entertain any claim in respect of the property or item affected. A warranty is an agreement expressed in the policy whereby the insured asserts that certain facts are, or shall be true, or that certain acts shall be done relating to the risk. The compliance with a warranty must be literally true. The condition makes clear that breach of warranty, by which the risk is increased or not, avoids any cover.

The latter portion of the condition, however, modifies this position by stating that if the policy is renewed and there was breach of a warranty before the renewal date and not after it and a loss occurs after the renewal is effected, in such a case the claim can be made. Noncompliance with a warranty prior to the current renewal period of a policy is not a bar to a claim. Thus non-compliance with a warranty

avoids a cover only during the period of insurance in which the breach occurred.

A policy usually contains a list of warranties some of which are made to apply. Later on, some warranties may be deleted or others might be added. In the former case premium is increased and in the latter it is decreased.

Condition 11. Arbitration

All differences arising out of this policy shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or, if they cannot agree upon a single arbitrator, to the decision of two arbitrators, one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties, or, in case the arbitrators do not agree, of an umpire appointed in writing by the arbitrators before entering upon the reference. The umpire shall sit with the arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the company. After the expiration of one year after any destruction or any damage the company shall not be liable in respect of any claim therefor unless such claim shall in the meantime have been referred to arbitration.

This condition is meant to prevent undue litigation and settle the dispute by arbitration. It is a very simple, cheap and expeditious method of settling disputes. Both the parties will appoint one arbitrator and if they do not agree upon one, then they will appoint one each. The arbitrators will settle the dispute and if they also disagree they may appoint an umpire who will settle the dispute in consultation with them. The insured cannot proceed in a law court against the insurer until the award is made. The arbitrators will also decide as to how the cost of arbitration will be borne by the parties.

Purchaser's Interest Clause

Sometimes a further memorandum in the following terms is also appended to the conditions:—

If at the time of destruction or damage to any building hereby insured, the insured shall have contracted to have sell his interest in such building and the purchase shall not have been but shall be thereafter completed, the purchaser on the completion of the purchase, if and so far as the property is not otherwise insured by or on behalf of the purchaser against such destruction or damage, shall be entitled to the benefit of this policy so far as it relates to such destruction or damage without prejudice to the rights and liabilities of the insured or the company under this policy up to the date of completion.

This clause provides that property which is the subject of contract to purchase shall be covered jointly for the benefit of the vendor and purchaser up to the date of completion of the sale for their respective interests. When the purchase is completed the 'alterations' condition applies and the insurer must be advised if the change of interest is to be admitted. The purchaser may elect to continue the insurance in his own name, in that case the purchase price will include the value of the unexpired insurance.

Loss Procedure

As soon as a loss occurs the insured must at once inform the insurer about it. If the loss is trivial, the insurer will send a claim form to the insured. This form requires the detailed information about the loss concerning the time, place and the circumstances under which it occurred and the details about the property. If the claim is regarded by the insurer as reasonable, he will send a cheque in settlement.

If the loss is serious, the insurer will appoint an assessor as soon as he is notified of the loss. The assessor will at once proceed to the place of fire to protect the salvage and enquire into the cause of fire.

avoids a cover only during the period of insurance in which the breach occurred.

A policy usually contains a list of warranties some of which are made to apply. Later on, some warranties may be deleted or others might be added. In the former case premium is increased and in the latter it is decreased.

Condition 11. Arbitration

All differences arising out of this policy shall be referred to the decision of an arbitrator to be appointed in writing by the parties in difference, or, if they cannot agree upon a single arbitrator, to the decision of two arbitrators, one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties, or, in case the arbitrators do not agree, of an umpire appointed in writing by the arbitrators before entering upon the reference. The umpire shall sit with the arbitrators and preside at their meetings and the making of an award shall be a condition precedent to any right of action against the company. After the expiration of one year after any destruction or any damage the company shall not be liable in respect of any claim therefor unless such claim shall in the meantime have been referred to arbitration.

This condition is meant to prevent undue litigation and settle the dispute by arbitration. It is a very simple, cheap and expeditious method of settling disputes. Both the parties will appoint one arbitrator and if they do not agree upon one, then they will appoint one each. The arbitrators will settle the dispute and if they also disagree they may appoint an umpire who will settle the dispute in consultation with them. The insured cannot proceed in a law court against the insurer until the award is made. The arbitrators will also decide as to how the cost of arbitration will be borne by the parties.

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Loss Procedure

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If the loss is serious, the insurer will appoint an assessor as soon as he is notified of the loss. The assessor will at once proceed to the place of fire to protect the salvage and enquire into the cause of fire.

He will send a preliminary estimate of the loss to the insurer and then furnish the insured with a claim form to be completed. When the details of the claim are available, he will assess the loss and settle with the insured and take a declaration from him regarding his acceptance. This, with the claim form and the Assessor's final report will be sent to the insurer for his consideration. The insurer will see whether warranties are complied with, and if he is satisfied he will remit the agreed amount to the insured. The Assessor's fees are payable by the insurer but the insured must bear the costs incurred in preparation of his claim.

When the property is insured with more than one insurer, the leading office or the office with the largest interest, will appoint the Assessor. He will send copies of his reports to each office and will apportion the claim.

Ex Gratia Payment

Sometimes a situation arises where a loss occurs to a property insured but the loss cannot be legally recovered either on technical ground or due to unintentional omission to include the property in the scope of the policy. There is no legal liability of the insurer under the policy in such a case, but the insurer regards it a moral obligation and makes good the loss. Such a payment is called "ex gratia" payment. It denotes an "Act of Grace" and the insurers pay it to avoid the hardship to the insured and also to keep the reputation of their fairness and generosity high. It serves as a sort of advertisement also, but any payment of this nature should not be construed as a precedent for similar action on a future occasion.

CHAPTER XXIV

RATING AND AVERAGE

The word 'rating' denotes the idea of fixing rates of premium for different risks. The system of rating in fire insurance is not so scientific as in life assurance, because no exhaustive statistics are available. The system of rating was, in its initial stages, more or less a guesswork but now with the passage of time, the experience has increased and efforts have been made to put it on a more equitable basis. The actual process of rating consists of three steps: (i) Classification, (ii) Discrimination and (iii) Fixing rates.

Classification

In the earliest stage the premium was fixed arbitrarily without any reference to the degree of hazard in a particular case. The method of fixing the premiums was simply to find out the average claim and average insurance over a number of years in past and fix the future premiums in view of that. Gradually it was realised that the above system did not take into consideration that all properties are not of similar class so far the risk is concerned and hence the premium should be fixed in relation to the class of risk. Therefore, the properties were divided in three classes, viz., (a) common or ordinary, (b) hazardous and (c) doubly hazardous. Different premium rates were fixed for each class.

The above classification remained substantially the same for many years, but with the passage of time it was found to be no longer appropriate because the classification is simply too crude and will not hold good when it is carried further to its logical conclusion. However, in course of time, the process of division was extended to the infinite variety of risks in existence. Moreover, experience was accumulated which could correct the rates fixed on old basis. So, the risks are now classified according to trades or

sections of trades, for the purpose of accumulating adequate data from which the rates may be calculated according to the hazards inherent in the process carried on and materials used.

Discrimination

When the different risks are put in a specified class, they are further differentiated from each other according to the merits and demerits of the individual risk. This process is called "discrimination" of the risks, and it aims at a more equitable basis of rating. To illustrate the point, dwelling house forms one class and all the dwelling houses could be put in the same class. But the different dwelling houses differ from each other so far as the risk is concerned. By the process of discrimination, it is possible to penalise those houses which have the extra hazard such as absence of water, distance from fire brigade station, dangerous method of heating, lighting, etc., by charging an extra premium; on the other hand, an appropriate discount could be given for those houses which have telephone, fire extinguishing appliances, nearness to fire brigade station, absence of dangerous processes in the vicinity, etc.

Rating

Having determined the class of a particular risk and discriminated the degree of hazard, the next step is to work out a rate of premium for it. The method of finding out the average premium rate for a class of risk is to take a particular period of years and compare the total of the losses in that class with the total values at risk as represented by the sums insured in the class. However, a sufficiently long period should be taken so that the experience of good as well as bad years may be taken into account. Again the experience should be taken from as wide a field as possible so that the law of averages may apply and the results may be fairly representative. The total losses should

also include the margin for expenses, reserves and a reasonable profit. If "L" represents the losses plus the estimated expenses, etc., and "V" the values (total sum insured), the 'average rate per cent.' can be calculated from the formula $\frac{L}{V} \times 100$.

The figure so obtained forms the basis for fixing premiums. From this, first, the insurer will fix a 'normal' rate, which is not the charge for the best risk, nor for an average risk, but for a risk lying between the two. Then the insurer will draw up a table on the basis of discrimination, both as an act of fairness to the insured and as a protection to the insurer against the competition. The table will include a list of features of extra hazard. Now, the premium for a particular risk will be fixed like this. First, the normal rate will be put and the additional charges will be added according to the extra hazard indicated from the table. The system is called 'normal plus extra.' If the property has better methods of reducing the risk, e.g., fire extinguishing appliances, fire proof materials used in construction, etc., the discount will be allowed depending upon the efficacy of the means adopted.

The above system of rating has two-fold advantages: firstly, it ensures an equitable treatment to the insured, and secondly, by inducing him to reduce the fire waste the benefit goes to the community. Such a system is called 'tariff' rating and is a middle course adopted between the so-called 'scientific' method of rating adopted in the United States and the old 'rule of thumb' method of pure guess-work. In U.S.A. the system is a very elaborate one, where every conceivable form of hazard is taken into consideration and the premium is charged accordingly.

It should be noted that the rates fixed according to the above system are not permanent, as the introduction of new materials and methods and the progress in fire prevention direction constantly introduce

fresh features which either increase or reduce the fire hazard. Premium rates, therefore, are applicable only for a particular period of time and have no permanent character.

Combined Risks

When there is a combination of risks of more than one class in respect of the same subject-matter, the treatment of the question of fixing one premium rates for them are 3 per cent. and 6 per cent. respectively, suppose in one building a part is lent to a bookseller and the rest is used as workshop and the normal rates for them are 3 per cent and 6 per cent respectively. What should be the rate for both the classes of risk under one policy? In such a case, one method is to charge the higher rate, i.e., 6 per cent. which includes the lower rate also. The other method is to add up both the rates and charge a rate between the higher rate, i.e., 6 per cent. and the combined rate, i.e., 9 per cent. The second method is more equitable because the elements of risk common to both classes go to determine the extent of hazard and this fact is recognised in this method, though in practice the first method finds more adherents.

Under-insurance and its Effect on Rating

One of the difficulties in arriving at a scientific basis of rating in fire insurance is of under-insurance. The equitable distribution of total losses over all the insured persons is possible only when each insured declares for insurance purposes, the full value of the property to be insured, i.e., when each insured takes insurance for the full value of his property. If this is not done, as is the case in practice, the premium rates will have to be increased for all. The persons taking policy for an adequate insurance will be penalised in form of higher premiums. The insured himself whose property is destroyed will also lose by underinsurance, as, in addition to higher premium, he is not

covered for the sum exceeding the insured amount. The only persons to gain from this will be those who have under-insured and who suffer only partial losses below the insured amount. The following illustration will explain the point clearly.

The average rate of premium is $\frac{L}{V} \times 100$.

Let $L = \text{Rs. } 500$ as representing losses plus expenses and profits.

$V = \text{Rs. } 4,00,000$ as representing the total insurance based on the full value of the properties insured.

In the above case of full insurance the rate will be—

$$\frac{500}{400000} \times 100 = \text{Re. } \frac{1}{8} = 2 \text{ as. per cent.}$$

But, suppose the total insurance for the same properties of the same value was only Rs. 2,00,000. The premium rate would have been—

$$\frac{500}{200000} \times 100 = \text{Re. } \frac{1}{4} = 4 \text{ as. per cent.}$$

Thus it is clear that the underinsurance increases the premium rate, and, hence, should be discouraged. The insurers, in an attempt to this end, introduce the 'average' clause.

Average

It has already been explained that the 'average' clause is inserted in order to penalise under-insurance. It restricts the liability of insurer to the amount proportionate to the premium received and thereby ensures the receipt of adequate premiums in respect of the risks undertaken. The simplest form of average clause is the "pro rata" condition of average. According to this, the insured is regarded his own insurer for the amount of underinsurance. Thus suppose the property worth Rs. 1,000 has been insured for Rs. 800 only, the liability of the insurer under the average clause will be as in the following cases:—

On a loss of Rs. 100, $\frac{80}{100} \times 100 =$ Rs. 80.

„ Rs. 800, $\frac{80}{100} \times 800 =$ Rs. 640.

„ Rs. 1000, $\frac{80}{100} \times 1000 =$ Rs. 800.

The condition of average has no effect when there is a total loss as is clear from the last case; but in case of partial loss, the insured suffers a penalty for the under-insurance.

Special Condition of Average

The above illustration is the case of a pro rata condition of average. Sometimes the 'special condition of average' or generally as it is called '75 per cent. clause' is inserted in the policy. This clause states that the average will be inoperative if the sum insured is not below 75 per cent. of the value of the property insured. This clause is usually inserted where the property necessarily fluctuates in value from time to time. Suppose a property is insured for Rs. 15,000 and the loss is Rs. 2,000. Now, if the property is valued at Rs. 20,000, the insured amount is not less than 75 per cent. of the value, hence the clause is inoperative and insurer will pay the full amount of loss, Rs. 2,000. But, if the value of the property was estimated to be Rs. 25,000, the insured amount falls below 75 per cent. of the value and hence the clause will operate. Therefore, the insurer is liable to pay $\frac{15000}{25000}$ of Rs. 2,000 = Rs. 1,200.

The degree of concession given to the insured under such a clause may be varying in different cases, e.g., '80 per cent average', '50 per cent average', etc.

Co-Insurance Clause

The terms of this clause are—

If at any time of fire the whole amount of insurance on the property covered by this policy shall be less than.....per cent of the actual cash value thereof, this company shall, in case of loss or damage, be liable for such portion of such loss or

damage as the amount insured by this policy shall bear to the said.....per cent of the actual cash value of such property.

Thus the co-insurance clause provides an unlimited gradation of under-insurance with a corresponding scale of rating. The insured gets more under this clause than what he will get under an ordinary average clause.

Suppose, the policy has "75 per cent average" clause and the property worth Rs. 4,000 is insured for Rs. 2,400 and the loss is Rs. 500. The insurer is liable for $\frac{2400}{4000}$ of Rs. 500 = Rs. 300.

But if the policy contains "75 per cent. co-insurance" clause, the insurer's liability in the above case would be

$$\frac{2400}{75\% \text{ of } 4000} \text{ of Rs. } 500 = \frac{2400}{3000} \text{ of Rs. } 500 = \text{Rs. } 400.$$

This system is more common in America.

CHAPTER XXV

RETENTION AND RE-INSURANCE

Retention

An insurer while accepting a risk has not only to see the degree of hazard in the risk but also to look to the possible loss which he may sustain as a result of fire. He has to be vigilant about fixing an adequate premium commensurate with risk, but there is one more point in fire insurance which deserves his careful consideration, and it is this that he shall not undertake a very heavy liability under one policy. As a prudent underwriter he must limit his liability to an amount which he can meet by the funds available at his command. If he accepts an unduly heavy liability under one risk, a serious loss may jeopardize the security of the other policy-holders by making

heavy inroads upon his funds. Therefore, it is in his interest not to accept a liability beyond a certain limit under one policy. He can do this by two methods, either he can refuse to underwrite heavy risks in which case he will lose business and hence it will be a bad security, or he can underwrite such risks but transfer a part of the liability to some other insurer. The latter method is the method of re-insurance. Here he has to decide the amount of maximum liability which he can assume on a particular risk. This is called the amount of retention.

There can be no hard and fast rule about the correct amount to retain over a risk in general. It will depend on the premium income of the company and the class of risk. Regarding the first point, it can be said that if the company is new it cannot afford to retain a large proportion of the liability under one risk because one loss may wipe out the whole year's premium income. Hence the insurers with higher income and reserves can keep a higher limit of retention. The other consideration is the class of risk. If the risk is hazardous, the probability of heavy loss is much greater in it than in other risks and hence the limit of retention should not be fixed very high in such risks. An insurer who could retain only Rs. 2,000 on a saw-mill can afford to retain very easily Rs. 15,000 on the hard-pressed cotton, though both of them might be insured for Rs. 20,000. Thus the fire risk is said to be a "double-edged entity" having the above two sides to be considered simultaneously for fixing the limits of a particular risk. The insurer will have to take into account all the factors which influence the degree of hazard in a particular risk, e.g., the type of property; standard of construction; nature of heating and lighting; the location of the property; the nature of the processes carried on and materials in use; the degree of exposure hazard; the direction of the prevailing winds, nature of adjoining, etc.

Re-insurance

Re-insurance is the transfer of insurance business from one insurance office to another. The office transferring the business is called the 'ceding office' and the office to which the business is transferred is called the 're-insurer'. According to the re-insurance contract, the re-insurer assumes all or part of the liability contracted for by the ceding office through the direct writing of a policy. The original insured is in no way affected by this re-insurance contract and he has no relationship with the re-insurer. Thus there are two separate contracts quite independent of each other. In the event of loss, the re-insurer will pay only to the ceding office upon payment of the loss by that office to its policyholder.

The contract of re-insurance, like the ordinary fire contract, is also a contract of indemnity and requires utmost good faith. The ceding office must disclose all the material facts to the reinsurer. The system of re-insurance has several advantages. It enables a wider distribution of risk and hence the personal incidence of loss is spread over the widest possible area. Due to this the insurers are enabled to limit their maximum loss on any one fire to a figure which does not deplete their funds. The insurer can assume more risks and thereby collect the experience of loss from a larger field. Without the re-insurance facilities a new office cannot enter the field successfully owing to the small retentions which it must observe. Again re-insurance has the effect of stabilizing income and losses over a period of years. The insured also has the advantage of dealing with only one office even for very large risks.

There are two principal methods of effecting re-insurance cover: Facultative re-insurance and Treaty re-insurance.

Facultative Re-insurance

'Facultative re-insurance' also termed 'Specific re-insurance' is a form which concerns itself with a specific transaction. It is in no way connected with other re-insurance business between the offices concerned, nor is dependent in any way upon other similar contracts. Each contract is written on its own merit and is a matter of individual bargaining between the parties. The insurer has the option of rejecting an offer if he so likes. The re-insurer will accept a risk only after proper scrutiny of the case. All information given to the re-insurer must be true and there must be no misrepresentation.

The advantages of this system are that the incidence of loss is spread over wider field. Again the scrutiny of each risk to be re-insured serves as a healthy check on the ceding office. The temptation to accept undesirable risks diminishes when it is felt that re-insurance would be difficult. But the disadvantage of this method is that it involves a lot of clerical work in issuing various documents and scrutinising the risk in great detail.

Treaty Re-insurance

The above system is an old one. There the ceding office is always under an uncertainty as to whether it will be successful in re-insuring a risk. To overcome this and other shortcomings of the specific re-insurance, treaty insurance was developed. The re-insurer and the direct insurer enter in a treaty providing that the former shall accept, without the option of rejecting, a specified proportion of the excess on any risk over the insurer's limit of retention. A treaty embraces future contracts as well as those in existence at the time the agreement is executed. There are, in general practice, two kinds of treaty, viz., 'Quota Treaty' and 'Surplus Treaty.' Under the former system, a specified proportion of every risk—good and bad—must be re-insured with the re-insurer. Thus

the liability of the re-insurer attaches as soon as the ceding company assumes the risk. Here the re-insurance is automatic. Under the 'Surplus Treaty,' the direct writing company retains to itself the right to decide whatever retention it considers necessary but must cede a specific proportion of the surplus to the treaty company. Most treaties to-day are written on the surplus basis, thereby permitting the ceding company to retain as much of the risk as it cares to and to cede only as much of the risk as is in excess of its facilities to handle.

The system of treaty re-insurance is more advantageous from the insurer's standpoint than the facultative system. There is a considerable saving in time and expense, and above all, it gives the insurer immediate cover for large amounts, as a definite measure of re-insurance cover is available automatically. As the expenses incurred by the treaty offices are lower, they pay invariably the higher commission to their insurers. The disadvantage of the treaty system is that heavy risks can be transferred at inadequate rates. Of course such a practice eventually defeat itself, as no re-insurer will continue a treaty unless it shows a reasonable profit over a period of years.

FIRE INSURANCE
APPENDICES

APPENDIX A

FIRE INSURANCE PROPOSAL FORM

Name of Proposer (in full).....

Address of Proposer

Business or Profession.....

PARTICULARS OF INSURANCE REQUIRED

1. Situation (in full)	.....

2. Construction of Building or Buildings ..	Walls ..	Roof.
---	----------	-------

3. Occupation of Building or Buildings ..	.....
(Please state the nature of goods stored in other Shops or Godowns in the same Building.	.....

4. Amount to be Insured.	On Buildings	On Household Furniture Personal Effects, &c.	On Machinery.	On Goods &/ or Merchandise.

5. Term of Insurance for.....Month.....From.....To.....

N.B.—If the Insurance is to cover:—

- | | |
|---|---------|
| 1. Goods and/or Merchandise state the nature thereof | { |
| | { |
| 2. Household Furniture and personal effects, Special mention must be made of any curiosity, picture or work of art, the value of which exceed Rs. 200 or £ 20/- | { |
| | { |
| 3. Premises having Servants' Quarters, Stables or other outbuildings adjoining or in proximity, give the Construction of such outbuildings, their distance from main building, and declare what amount of this insurance is to apply thereto. | { |
| | { |

Acceptance of this Proposal is subject to the rates and regulations of the Association's Tariffs lodged with the Superintendent of Insurance.

6. Is the building detached? If so, give distance from nearest building. {
 7. Give the construction and occupation of adjoining buildings, if any. {
 8. Has any Insurance Company ever declined a proposal from you, or terminated your Policy? {
 9. Have you ever sustained loss by Fire? If so, give particulars. {

I hereby declare that the statements made by me in this Proposal Form are true to the best of my knowledge and belief, and I hereby agree that this declaration shall form the basis of the contract between me and THE..... INSURANCE CO., LTD.

Date at.....day of.....194

Proposer's Signature

APPENDIX B

No.....

Bombay,

TEMPORARY COVER-NOTE. (NOT EXCEEDING 30 DAYS.)

M.....
 having this day proposed to effect an Insurance against Fire and Lightning for a period of.....months, from.....to.....
 on the usual terms and conditions of this Company's policies and having agreed to pay the undernoted premium on or before the.....the following property is hereby insured to the extent of Rs.....in the manner specified below:—

Rs.....

For.....Months.	Rate.....	Premium	Rs.....
To be paid to the Co.		Stamp Duty	Rs.....
on, or, before.....			

Total Rs.....

Subject to the Special Conditions Overleaf.

Fire Manager.

APPENDIX C

DECLARATION CLAUSE.

THE.....INSURANCE COMPANY, LIMITED

Special Conditions attached to and Forming part of Policy No.....

1. In consideration of the premium by this policy being provisional in that it is calculated on 75% of the sum insured hereby and is subject to adjustment on expiry of each period of insurance.

The Insured agrees to declare to THE.....INSURANCE COMPANY LTD. in writing the value of his stocks other than retail in each separate Building or Non-communicating Compartment or in the open on the following basis namely.....

.....and to make such declaration(s) within fourteen days of the.....of each calendar month, such declarations to be signed by the Insured or by a responsible person authorised to sign on his behalf.

In the event of a declaration not being made within the fourteen days mentioned above then the Insured shall be deemed to have declared the sum insured hereby as the Value at risk.

On the expiry of each period of insurance the premium shall be calculated at the rate of as shown in the Policy on the average sum insured, namely, the total of the value declared or deemed to have been declared divided by the number of declarations due to have been made. If the resultant premium be greater than the provisional premium the Insured shall pay the difference, if it be less the difference shall be repaid to the Insured but such repayment shall not exceed 50% of the provisional premium.

2. The basis of value for declarations shall be the market value and any loss hereunder shall be settled on the basis of the market value immediately anterior to the loss.

3. If after the occurrence of a loss it is found that the amount of the last declaration previous to the loss is less than the amount that ought to have been declared, then the amount which would have been recoverable by the Insured shall be reduced in such proportion as the amount of the said last declaration bears to the amount that ought to have been declared.

4. Notwithstanding the occurrence of a loss it is understood that the sum insured will be maintained at all times during the currency of the policy and the Insured therefore undertakes to pay extra premium on the amount of any loss *pro rata* from the date of such loss to the expiry of the period of insurance, the premium being calculated at the rate applicable to the stocks destroyed and such extra premium shall not be taken into account in, and shall be distinct from the final adjustment of premium.

5. In the event of this Policy being cancelled by the Insured during its currency (whether stocks exist or not) the premium to be retained by the Company shall be the appropriate short period premium calculated on the average amount insured upto the date of cancellation or 50% of the provisional premium whichever is the greater, but if the Insured after a loss has occurred the premium to be retained shall be the *pro rata* proportion of the premium calculated on the average amount insured upto the date of cancellation plus the *pro rata* proportion of the premium from the date of loss to the expiry of the period of insurance on the amount of the loss paid, or 50% of the provisional premium which ever is the greater.

6. The maximum liability of the Company shall not exceed the sum insured hereby and premium shall not be receivable on values in excess thereof. The sum Insured may however, be increased by prior agreement with the Company in which event the new sum insured and the date from which it is effective will be recorded on the policy by endorsement.

8. It is warranted that every policy covering the Insured's stocks on a declaration basis shall be identical in wording.

9. This Insurance is subject in all respects to the printed conditions of the policy except in so far as they may be varied by these special Conditions.

APPENDIX D

THE.....INSURANCE COMPANY, LIMITED

REINSTATEMENT CLAUSE.

Attached to & Forming Part of Policy No.....

Whereas the amounts declared for insurance on Buildings and Machinery covered by this Policy represent their reinstatement value and whereas the Assured undertake to maintain insurance upto reinstatement value during the currency of this policy it is hereby declared and agreed that:—

- (1) Basis of loss settlement shall be the cost of replacing or reinstating property of the same kind or type but not superior to nor more extensive than the insured property when new.
- (2) Failing reinstatement or replacement the Company shall not be liable for more than the actual value of the property at the time of the fire.
- (3) Payments in excess of what would be payable under the ordinary fire Insurance can only be made after expenditure has been incurred by the Assured in replacing or reinstating the property damaged and the total amount paid shall not exceed the amount of such expenditure.
- (4) The amount payable under the Policy shall not exceed that proportion of the cost of reinstatement that the sum insured under the Policy bears to the total reinstatement value of the property insured.
- (5) During the currency of this insurance the buildings and machinery hereby insured shall be kept in thorough repair.

APPENDIX E

STANDARD FIRE POLICY, Edition 1923.

In Consideration of the Insured named in the Schedule hereto paying to theASSURANCE COMPANY LIMITED (hereinafter called the Company) the first premium mentioned in the said Schedule the Company agrees (subject to the Conditions contained herein or endorsed or otherwise expressed hereon which Conditions shall so far as the nature of them respectively will permit be deemed to be Conditions precedent to the right of the Insured to recover hereunder) that if after payment of the premium the property insured described in the said Schedule, or any part of such property, be destroyed or damaged by

- (1) Fire (whether resulting from explosion or otherwise) *not occasioned by or happening through*
 - (a) Its own Spontaneous Fermentation or Heating or its undergoing any Process involving the application of Heat,
 - (b) Earthquake, Subterranean Fire, Riot, Civil Commotion, Foreign Enemy, Military or Usurped Power, Rebellion, or Insurrection,
- (2) Lightning,
- (3) Explosion of Boilers used for domestic purposes only,
- (4) Explosion, in a building not being part of any Gas works, of Gas used for domestic purposes or used for lighting or heating the building,

at any time before 4 o'clock in the afternoon of the last day of the period of insurance named in the said Schedule or of any subsequent period in respect of which the Insured shall have paid and the Company shall have accepted the premium required for the renewal of this Policy, the Company will pay to the Insured the value of the property at the time of the happening of its destruction or the amount of such damage or at its

option reinstate or replace such property or any part thereof *Provided that* the liability of the Company shall in no case exceed in respect of each item the sum expressed in the said Schedule to be insured thereon or in the whole the total sum insured hereby or such other sum or sums as may be substituted therefor by memorandum hereon or attached hereto signed by or on behalf of the Company.

SCHEDULE

<u>The Insured</u>		Policy No..... Agency.....
<u>The Property Insured</u>		Sum Insured
Total sum insured		
Period of Insurance From..... To..... at Four o'clock in the afternoon	First Premium	Annual Premium Due

Signed this....., on behalf of the..... Assurance Company, Limited.

.....
Fire Manager

.....
Director.

PART FIVE
MISCELLANEOUS

CHAPTER XXVI

MOTOR INSURANCE

Motor Risks

The owner of an automobile vehicle is exposed to various types of risks. These risks fall into two groups: First, those of damage to, or loss or destruction of, the car itself and, second, that of being called upon to pay damages for injuries which may be done to others through the use, ownership or maintenance of the car.

The *first* type of risk may further be classified as follows:—

- (i) Destruction by fire, internal or external in origin.
- (ii) Theft.
- (iii) Injury through collision, with some other object, moving or fixed or through upset.
- (iv) Other damage to car as by breakage of glass, damage in a flood, or while being transported.

The *second* type of risk is the liability of the insured to third parties arising out of accidents caused by the use of a motor vehicle on the road. The liability may be for death or bodily injury or for damage to property. The risks also vary according to the class of vehicle, e.g., in a passenger automobile the liability may be for death of, or injury to, passengers or in a common carrier the liability may be loss of or damage to the property carried.

Motor Insurance

The owner of a vehicle who is exposed to the above risks may get himself insured against all or some of them with an insurance company. Regarding third party risks of personal nature, i.e., any liability in respect of the death or bodily injury to any person

caused by or arising out of the use of the vehicle in a public place, the owner has no option but to insure because under the Motor Vehicles Act of 1939 he cannot use a motor vehicle in a public place without a policy of insurance. Similarly he has also to take an insurance policy covering any liability arising under the provisions of the Workmen's Compensation Act, 1923 in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle. Thus it will be seen that an owner must take an insurance policy to cover his legal liability to third persons and his driver. This factor of compulsory insurance of third party risks is unique in motor insurance. It is a matter of national policy. So far the other risks are concerned he is at liberty not to insure, but it is in his interest to do so; and usually all the owners take insurance against most of the risks mentioned above. The insured will pay the agreed premium to the insurance company which will make good all the losses arising out of the risks insured against in a particular policy.

The insured can combine the different risks under one policy. These days comprehensive policies are issued which cover a wide variety of risks under a single coverage. In America all the risks cannot be insured with one company. Usually fire and theft risks are written by fire companies and liability insurance is entirely written by casualty companies. The collision and property damage coverages are divided between both the groups. When there is a common control over the two companies, combination policies are issued to cover all risks. In India, however, there is no such distinction between different companies and any company doing general insurance business can cover all the risks under one policy.

Classification of vehicles insured

The vehicles are generally divided in the following four categories for the purposes of insurance:

- (1) Private cars.
- (2) Commercial vehicles which refer to any type of mechanically driven vehicle used for business or trade purposes. They may be passenger vehicles, goods vehicles or tractors.
- (3) Trade vehicles.
- (4) Motor cycles.

Rates are promulgated for each classification, and for rate-making purposes further classification on the basis of the use to which the vehicle is put is made within those classes.

Tariff and Non-Tariff Offices

The insurance companies are of two types. Those which are members of the Motor Tariff Association are called 'Tariff Offices' and those which are not the members of the Tariff Association are known as 'Non-Tariff Offices.' Most of the companies are tariff offices. The premium rates and policy conditions of all the tariff offices are regulated by the Tariff Association. In India there is one Tariff Association for commercial vehicles for the whole country, but for the private cars and motor-cycles there are regional tariffs. The country is divided in three regions, viz., Bombay, Calcutta and Madras and any insurance company lying in a particular region has to become the member of that particular regional Tariff Association. Of course there are no territorial limits and restrictions for the driving of vehicles in any region but the insurance must be effected in a particular region. Similarly a tariff office in a particular region can insure a vehicle in some other region but the premium and the conditions must be governed by the Tariff Association of the region in which the vehicle is.

Types of coverages

From the standpoint of the risks covered each vehicle policy can be divided in the following three types.

(1) *Act Policy*

An Act Policy covers all risks for which a policy is necessarily to be taken by the owner of a vehicle under the Motor Vehicles Act. According to this Act, a policy must be taken to cover any liability which may be incurred by the insured in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle in a public place. The extent of the amount to which a policy should be taken is also specified in the Act. Again a policy of insurance is also necessary to cover any liability arising under the provisions of the Workmen's Compensation Act 1923, in respect of the death of or bodily injury to any paid employee engaged in driving or otherwise in attendance on or being carried in a motor vehicle. All these provisions together with the exceptions are printed on the policy itself. It should be seen that insurance is compulsory as to personal injury only and not as to damage to property.

(2) *Third Party Policy*

This policy covers not only those third party risks for which an insurance policy is legally necessary as explained above but also covers such risks for which the insured may be held liable under various laws, such as Fatal Accidents Act 1855 and common law. Here the policy includes also the damage to property of third parties for which the insured is liable. The insurer undertakes to pay in addition to the compensation, all sums including claimant's costs and expenses for which the insured becomes legally liable.

(3) *Comprehensive Policy*

A comprehensive policy covers a wide variety of risks under single coverage, but it should not be understood that it covers each and every imaginable risk. There are some very common risks which alone are covered by this policy and if any other risk is to be covered it can be added to the risks insured after the payment of extra premiums. A comprehensive

- Medical Expenses up to a certain limit incurred in connection with injuries sustained by the insured or any occupant of the car.

In addition to the above risks, the insured can also secure additional benefits after paying extra premiums. These benefits may be (i) death or bodily injury of the insured alone or together with wife, and of unnamed passengers, (ii) riots and strikes, etc., (iii) loss of rugs, coats or luggage by theft, larceny or fire, etc.

Policies relating to commercial vehicles are not so comprehensive as those by which private cars are insured. The main difference being the omission of personal accident benefits and the limitation of third party indemnity in respect of damage to property to Rs. 20,000 on any one accident. The policies on motor cycles are issued on similar lines as the cars.

Usually the insured takes comprehensive policy which includes the third party risks as well. The conditions of different policies are different and must be studied carefully.

Extra benefits in policies on private cars

(i) *Personal Accident Insurance*

A comprehensive policy in addition to the coverage mentioned above also confers extra benefits for which the insured has to pay extra premiums. He may include 'personal accident insurance,' by which the company undertakes to indemnify the insured or a named person, in case of death, bodily injury resulting in (i) loss of two limbs or sight of two eyes or loss of one limb and sight of one eye, or (ii) loss of one limb or sight of one eye and temporary total disablement. The measures of indemnity in these different cases are fixed in a table and premium is charged according to the indemnity desired by the insured. In the first two cases, i.e., death and bodily injury the indemnity is a lump sum while in case of temporary total disablement it will be in periodical payments upto a stated number of instalments. The insured can insure his wife too for the above casualties. The benefits are available to the insured not under 16 and not above 65 years of age. Similarly the personal accident insurance can also be taken on unnamed passengers in the insured car.

(ii) *Riots, Strikes, etc.*

Loss of or damage to the car occasioned by strike, riot and civil commotion can also be covered by paying extra premium. The company reserves to itself the right to alter this premium without notice.

(iii) *Loss of rugs, etc.*

Loss of rugs, coats or luggage by theft, larceny or fire with a stated limit for any one loss can be covered by paying extra premiums.

of this Chapter.¹ Proposal form for insurance of motor cycles is similar to that for private cars. The proposer must carefully answer all the questions which are mentioned in the proposal form. It will be on the basis of his answers that the risk will be assessed and the premium will be fixed. Non-disclosure about any material fact will entitle the company to repudiate the liability.

The questions in the different proposal forms differ because they relate to the different vehicles. The first part of the questions relates to the identification of the vehicle such as the registered letters and number, make, horse power, type of body, year of manufacture, seating or carrying capacity as the case may be, present estimated value, etc. The second part of the proposal form deals with questions the answers to which will determine the risk so that an appropriate premium may be fixed. These questions are with regard to the use to which the vehicle is put, its equipment, past insurance, type of policy desired and risks to be covered, etc.

At the end of the proposal form there is the declaration about the truth and completeness of the statements made in the proposal form by the proposer

1. See Appendix A and B.

and this declaration is made the basis of contract between the assured and the insurance company subject to the conditions prescribed in the policy.

Rating

When the proposal form is received by the company it will fix the premium rate. If the company is a tariff office, it will consult the rating book issued by the Tariff Association, which contains schedules of rates for different vehicles for different policies. Each member company charges the rates according to the schedule for the particular vehicle under a particular policy. The company will first find out the "basic premium" from the schedule and then add to it the amounts for additional risks or subtract from it the rebates allowed for excluding certain risks. The final amount will be the premium charged from the insured.

In case of Act and Third Party Policies, it is the horsepower which determines the premium for private cars and motor cycles, and for the comprehensive policies horsepower and the value of the vehicle are the principal factors for fixing the premium.

If the owner or a named person is to drive the car, a rebate of the premium is allowed because of lower mileage. A rebate is also allowed if the insured agrees to bear a particular first portion of each claim for damage to the insured car. Similarly if one owner possesses more than one car and all of them are insured the company will allow a rebate. Further, if the insured is the member of any recognised Automobile Association, a rebate of 10 p. c. is allowed.

In rating the *Commercial Vehicles*, the procedure is a little complicated one. It will depend on the type of vehicle, its carrying capacity, vehicle hauling trailer or not, value, risks covered, etc. Different rates are charged for town and mofussil areas. The rebates are allowed in case of commercial vehicles and motor cycles on the same grounds as those mentioned in case of private cars.

Issue of Policy

On hearing from the company, the proposer will pay the premium fixed and the agent will first issue a "cover note" together with a "certificate of insurance" to the assured. The 'cover note' denotes the acceptance of the risk by the company and will serve as the basis of contract till the final policy is issued. The 'certificate of insurance' is also issued with the cover note for the convenience of the insured who can produce it before the regional authorities in proof of the insurance of his vehicle. It contains certificate number and other particulars about the vehicle and the insurance. A specimen of its form is given at the end of the chapter.¹

There are various types of forms of certificate of insurance depending on the type of vehicle, persons entitled to drive and limitations as to use.

Term of Insurance

No insurance is usually granted for a period longer than one year excepting for any part of the next year required to make the policy fall due on some particular date to meet the convenience of the insured. Policies for periods shorter than a year can be granted at short term rate where the proportionate premium will be higher on such policies, e.g., a policy covering not more than 6 months will be charged three fourths of the annual premium.

Additions of benefits during the currency of policy

If the insured wants to cover any extra benefits or cancel limitations during the currency of an annual policy up to the expiry date he is allowed to do so after paying extra premiums on a pro-rata basis subject to any minimum premium applicable.

Change of vehicle

If the insured wants to dispose of his insured car

1. See Appendix D.

and replace it by another, the policy can be transferred to apply to the new car. In such a case the premium will have to be adjusted on a pro-rata basis, if necessary.

Furlough concessions

If the car is laid up in a garage for two or more consecutive months the company will, provided previous notice is received and the Certificate of Insurance is returned, restrict the cover to fire and theft risks only, and either (a) make a refund of the pro-rata premium for such period or (b) extend the policy for a period equal to the period during which the cover is so restricted, subject in either case to payment of a small additional premium. These concessions are known as "furlough concessions".

Settlement of claims

The insured should give a notice in writing to the company immediately upon the occurrence of any accident or loss or damage. This is essential as the company may be seriously prejudiced in obtaining the facts and circumstances of an accident if the notice is delayed. Eye-witnesses must be traced if possible and their statements secured whilst the details are fresh in their minds. On receiving the above notice, the company shall send a Claim Form to the insured to be filled up by him. A specimen copy¹ of such a form is given at the end of the chapter which will show as to what information is usually required therein. If the claim relates to personal injury, a medical examination will be arranged by the company. It should, however, be remembered that fraudulent claims are not uncommon in motor insurance and hence a searching enquiry is essential about the claims made. The company may check the claim form to find out whether the claim appears to be one which is covered by the policy. The claim might be

¹ See Appendix E.

a loss of, or damage to the car itself or regarding the third party risks. For the latter type of claims the policy conditions provide that the insured must not make any admission of, offer or promise payment or indemnity without the written consent of the company. If the company wants to defend any such claim or to prosecute any party the insured is bound to render all assistance to the company in such proceedings. The insured is also bound to take all possible steps to prevent any loss or damage to the vehicle.

In settlement of 'own damage' claims, the insurer shall try to ensure that the insured obtains a settlement which will not leave him dissatisfied, but in case of third party claims the settlement will be made in accordance with the strict letter of the law and at as little cost as possible.

In case of 'own damage', the company will pay the claim for repair charges. If the claim is serious, a detailed enquiry is undertaken and the insurer may undertake to repair the damage.

Negligence of the parties

It should be noted that the policy covers the third party risks—only such risks for which the insured would be *legally* liable. If due to an accident through the insured vehicle a third party claim arises but if it can be proved that the accident was not on account of any negligence on the part of the insured or his driver, the insured will not be legally liable for the claim and hence the insurance company will have no liability. In order to prove that there was no negligence on the part of the insured, many times the insurer defends any legal proceedings for claim. If it is proved that the injured party was at fault, the insured has no liability if he had taken proper care to avoid the accident. When drivers of two vehicles are at fault for any injury to the third person, then the injured person can recover damage from the owner of any of them or both jointly.

Total and partial losses in "own damage"

As soon as the company receives information of an accident, it will send its surveyor who may ascertain whether the loss is the total or partial one. If he finds that the loss is a total loss, the measure of indemnity will be the value mentioned in the policy less the depreciation charges. If there was an under-insurance the proportionate claim only will be paid. Any salvage remaining after paying the total loss to the insured will go to the company. If the loss is not total loss the surveyor will assess the loss and the company will pay the amount. In case of partial loss as well, if there is under-insurance the average clause is applicable and the claim will be settled on a pro-rata basis. The cases of under-insurance in motor insurance are rare and specially it becomes difficult to prove the real value of the vehicle. The company, if it so selects, can undertake to replace or repair the losses instead of cash payment.

Knock for Knock agreement

This is an agreement between two different insurance companies by which they agree that neither party will seek to recover from the other, any damage done in collision or attempt to avoid collision, to vehicles insured or owned by either party. It means that when a collision or attempt to avoid collision results in damage to one or both vehicles insured with them, each insurer will bear his own loss and will not recover from the other irrespective of the consideration as to who was legally liable. This agreement does not affect the insured parties. It is entered into with a view to reduce the heavy cost of investigation and litigation for claims and also to expedite settlement, much to the advantage of the insured. The agreement applies to cases of damage to vehicles only.

But the above agreement will not be equitable when made with commercial vehicles, because ordi-

narily these vehicles being heavier than a large majority of other vehicles, do more damage than they sustain. In such cases, therefore, the "knock for knock" agreement is substituted by a "halving agreement," according to which the two insurers pool the damage done to both the vehicles and each pays one-half of the total damage.

The Policy and its Contents

As observed previously the vehicles are of four types, viz., private cars, commercial vehicles, motor cycles and trade vehicles. Again the coverage asked for any of these vehicles is of three types, viz., act only, third party and comprehensive. Usually the companies have one 'Act only' form for all vehicles and different comprehensive policy forms for the four types of vehicles. By studying the comprehensive policy for any vehicle a full idea can be obtained of the other coverages also, as they are usually included in it. The provisions of a comprehensive policy¹ for *private cars* are given below.

Loss or damage

The company indemnifies the insured against loss or damage to the car and/or its accessories arising (i) by accidental external means, (ii) by fire, external explosion, self-ignition, lightning, or frost, or burglary, housebreaking or theft, (iii) by malicious act (iv) whilst in transit by road, rail, inland waterway, lift or elevator.

The company is not liable for (a) consequential loss, depreciation, wear and tear, mechanical or electrical breakdowns failures or breakages and (b) damage to tyres. If the motor car is disabled by reason of loss or damage covered under the policy, the company shall pay the reasonable cost of protection and removal to the nearest repairers and of redelivery to the

1. See Appendix C.

insured but not exceeding a fixed amount for any one accident.

Liability to third parties

The company will indemnify the insured in the event of accident caused by or arising out of the use of the motor against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of (a) death or bodily injury to any person except where such death or injury arises out of and in the course of the employment of such person by the insured, (b) damage to property other than property of insured or held in his trust or custody or control. The company will pay all cost and expenses incurred with its written consent. The company is also liable to indemnify the driver who drives the motor car on insured's order or permission, provided that such driver (i) is not entitled to any indemnity under any other policy, (ii) shall observe conditions laid down in policy as if he were the insured.

Medical expenses

The company pays to the insured also the reasonable medical expenses not exceeding a stated amount in respect of any one accident incurred in connection with any bodily injury sustained by the insured or any occupant of the car, as the direct and immediate result of an accident to the car.

General Exceptions

The company is not liable in respect of

- (1) any accident, loss, damage, liability caused, sustained or incurred outside the geographical area,
- (2) any claim arising out of contractual liability,
- (3) any accident, loss, damage, liability caused sustained or injured whilst the insured car is (i) being used otherwise than in accordance with the limitation as to use, or (ii) being driven by any person other than a driver.

Moreover, the policy does not cover any loss damage or liability due to flood, typhoon, hurricane, volcanic eruption, earthquake, warlike operations, civil war, strike, riot, civil commotion, mutiny, etc. It also excludes any liability to the driver who is under the influence of liquor or drugs with consent of the insured.

Conditions

The other conditions of the policy refer to immediate notice of an accident to the company and to the rendering of every assistance to it in assessing the cause of accident, extent of damage or in civil court proceedings. The insured cannot settle or admit any claims without the consent of the company. It is the duty of the insured to reasonably safeguard the car from loss or damage and to maintain in efficient condition and to prevent further damage after accident. When there is any loss, the company can either repair or reinstate the car or its part or may pay in cash the amount of loss or damage and the liability of the company shall not exceed the actual value of damaged or lost parts plus the reasonable cost of fitting and in no case shall exceed the insured value of the car. The policy can be cancelled by insurer after seven days' notice and in that case the unexpired premium at pro-rata basis will be refunded. Similarly, the insured can also ask for cancellation of the policy and in that case the balance of premium will be refunded after deducting the premium at short period rates for the time the insurance remained in force. In case of double insurance, the company pays only its ratable proportion of the claim. Lastly, there is an Arbitration clause which lays down that the arbitration will precede any civil suit in case a dispute arises between the parties.

No-claim Bonus

The policy also provides that when a policy is renewed, a bonus in form of reduction of renewal

premium will be allowed, provided there was no claim under that policy in the preceding years. The percentage of reduction will vary according to the number of preceding years during which there was no claim. Such a bonus is called 'no claim bonus.' It is meant to encourage careful driving.

Transfer of Interest

The policy also provides for transfer of interest during the currency of the policy to any other person, but the period during which the interest was in the transferor shall not accrue to the benefit of the transferee for the purposes of 'no claim bonus'.

The schedule

The other part of the policy is the schedule which contains the policy number, the name of the company, the name address and profession of the insured, period of insurance and geographical area. It also includes the registration mark, make, type of body, horsepower, year of manufacture, seating capacity and the value of the car insured. This information is required for the identification of the car and settling the claim. The schedule also limits the use of the car for social, domestic and pleasure purposes and for the insured's business only. The use of the car for hire, reward, racing, speed testing or carriage of goods in connection with any trade or business is excluded from the scope of the policy. The name of the driver is also mentioned who must hold a licence to drive the car. Lastly, the schedule contains the date of proposal and the amount of premium.

Policies on commercial vehicles

Most of the conditions of comprehensive policies covering commercial vehicles are same as those of private cars. There are some differences regarding the risks covered and their limit. Usually the commercial vehicle policies contain a long list of excep-

tions which are not included in the cover. All these are clearly mentioned in the policy itself and a perusal of the document will make them clear to the reader.

Policies on Motor Cycles

A comprehensive policy on motor cycles is generally issued to cover the third party risks, accidental or malicious damage including transit, fire, lightning, self-ignition or explosion, theft, removal charges. Damage to rubber tyres is not covered unless the motor cycle and/or side car is damaged at the same time. The general exceptions of this policy are same as in case of a private car.

The liability to side-car passengers on account of any accident in direct connection with the insured motor vehicle can also be covered by paying extra premium. Similarly the personal accidents to himself or driver can also be covered. The rebate is also allowed for bearing the first stated portion of any claim or for being the member of a recognised Automobile Association or on no-claim grounds in preceding years.

The other conditions regarding notice of accidents, arbitration, etc., are same as in case of private car policies.

MOTOR INSURANCE
APPENDICES

Premium for Comprehensive/Liability to Public/Act only Policy: Rs.		
		Deduct %
6. Will Proposer bear any portion of each claim for loss of or damage to vehicle? If so, state amount		BALANCE Deduct %
7. If more than one Car to be insured, state number.		BALANCE Deduct %
8. Is Proposer a member of a recognised Automobile Association? If so, please give the name and number of ticket		BALANCE Add Rs.
9. Is Proposer or his Wife, or both Proposer and Wife to be covered for Personal Accident Insurance? If so, state who and whether for benefits "A" or "B,"		Add Rs.
10. Are Passengers to be covered for Personal Accident Insurance?		Add Rs.
11. Do you wish the risks of Riot and Civil Commotion to be covered?		Deduct %
12. Are you entitled to "No claim" Rebate from your previous insurers? If so, please attach their renewal notice showing the rebate		BALANCE Add Rs.
13. State numbers of driver(s) and/or cleaner(s) you wish to insure under the <i>Workmen's Compensation Act</i> . (Insurance of this risk is compulsory under the Motor Vehicles Act 1939)	Driver(s)Cleaner(s)	
TOTAL PREMIUM Rs.		

I/WE HEREBY DECLARE AND WARRANT that the above statements are true and complete. I/We desire to effect an insurance as described herein with the Company, and I/We agree that this proposal and declaration shall be the basis of the contract between me/us and the Company, and I/We agree to accept a Policy subject to the conditions prescribed by the Company.

Dated, 19

Proposer's

Dated, 19.....

Proposer's
Signature

This form is not applicable for Cars or Lorries used for business or trade Purposes

APPENDIX B

Proposal Form for Insurance of Commercial Vehicles

PLEASE ANSWER EVERY QUESTION AND FULLY

Policy No. M. V. (C).....

Agency..... Branch.....

.....INSURANCE COMPANY, LIMITED.

Proposer's (Owner's) Name.....

Address

Business or Occupation.....

Registered Letters and Number of Vehicle	Make of Vehicle	Horse Power (Treasury Rating.)	Type of Body.	Petrol or Diesel or Oil, Steam or Gas driven.	Year of Manu- facture.	Licensed Carrying Capacity.		Actual Cash price paid by Proposer for vehicle and acces- sories. Rs.	Date of Delivery to Proposer	Whether New or Second- hand at time of Delivery.	Proposer's estimate of Present Value including accessories thereon. Rs.
						Goods (Weight in Lbs. or Cwts.)	Number of Passen- gers (in- cluding Driver)				

1. Will the Vehicle(s) be used for any of the following purposes?

- For carrying passengers and their luggage for hire or reward.
- For cartage of the Proposer's own goods other-
wise than as in (c) below.
- For cartage of the Proposer's own goods from
outlying villages for sale in Market towns and
vice versa.
- For cartage for other persons for hire or
reward.

If not, state exactly for what purpose it/they will
be used.

Acceptance of this Proposal is subject to the rates and regulation of the
Association's Tariffs lodged with the Superintendent of Insurance

APPENDIX B—Continued

2. Is/are the Vehicle(s) fitted with dual rear wheels and/or double springs?			
3. Will the Vehicle(s) be solely used within the limits of the Islands of Bombay and Salsette? If not, state where?			
4. Is (are) the Vehicle(s) in a perfect state of repair?			
5. What accidents (if any) have occurred to this or any other Vehicle at any time owned or driven by Proposer?			
6. Has proposer ever been insured for Motor Risks before? If so, state name of Company or Underwriter.			
7. Has any Company or Underwriter— (a) refused to renew or cancelled your Policy? (b) declined your proposal for insurance? (c) increased your Premium or imposed special conditions on renewal? (d) required you to bear the first portion of any claim?	(a) (b) (c) (d)		
Premium for Comprehensive/Third Party only/Act only Policy: Rs.			
8. Do you wish to bear a portion of each claim for loss of or damage to vehicle? If so, state amount ..		Deduct %	
9. Do you wish limit of indemnity in respect of claims by public increased beyond the limit prescribed by the Motor Vehicles Act 1939? If so, state amounts		Balance Rs. Add Rs.	
10. State the limit of indemnity you require in respect of your legal liability to passengers	Rs. Rs.	any one Passenger. any one Accident. Add Rs.	Rs. Rs.
11. Do you wish to cover against the risks of Riot and Civil Commotion?		Add Rs.	Rs.

APPENDIX B—Continued

12. Will trailers be drawn? If so, give identification number or mark of each	Rs. Add	
13. Are you entitled to "No claim" Rebate from your previous insurers? If so, please attach their renewal notice showing the rebate	Rs. Deduct	
14. State the number of Driver(s) and/or Cleaner(s) and/or Conductor(s) you wish to insure under the Workmen's Compensation Act. (Insurance of this risk is compulsory under the Motor Vehicles Act 1939)	Balance Add	
TOTAL PREMIUM Rs.		
<p>I/WE HEREBY DECLARE AND WARRANT that the above statements are true and completed. I/We desire to effect an Insurance as described herein with the Company, and I/We agree that this proposal and declaration shall be the basis of the contract between me/us and the Company, and I/We agree to accept a Policy subject to the conditions prescribed by the Company.</p>		
<p>Dated, 19.....</p>		<p>Proposer's Signature</p>

APPENDIX C

Private Cars Comprehensive Policy (India)

....INSURANCE CO. LTD.

WHEREAS the Insured by a proposal and declaration dated as stated in the Schedule which shall be the basis of this contract and is deemed to be incorporated herein has applied to the Company for the insurance hereinafter contained and has paid or agreed to pay the premium as consideration for such insurance in respect of accident loss or damage occurring during the Period of Insurance.

NOW THIS POLICY WITNESSETH:

That subject to the Terms Exceptions and Conditions contained herein or endorsed or otherwise expressed hereon

SECTION I.—LOSS OR DAMAGE

The Company will indemnify the Insured against loss of or damage to the Motor Car and/or its accessories whilst thereon

- (a) by accidental external means
- (b) by fire external explosion self-ignition lightning or frost or burglary house-breaking or theft
- (c) by malicious act
- (d) whilst in transit by road rail inland waterway lift or elevator

The Company shall not be liable to make any payment in respect of:—(a) consequential loss depreciation wear and tear mechanical or electrical breakdowns failures or breakages and (b) damage to Tyres unless the Motor Car is damaged at the same time when the liability of the Company is limited to 50% of cost of replacement.

In the event of the Motor Car being disabled by reason of loss or damage covered under this Policy the Company will bear the reasonable cost of protection and removal to the nearest repairers and of redelivery to the Insured but not exceeding in all Rs. 150 in respect of any one accident.

The Insured may authorize the repair of the Motor Car necessitated by damage for which the Company may be liable under this Policy provided that:—

- (a) the estimated cost of such repair does not exceed Rs. 300
- (b) the Company is furnished forthwith with a detailed estimate of the cost and
- (c) the Insured shall give the Company every assistance to see that such repair is necessary and the charge reasonable.

SECTION II.—LIABILITY TO THIRD PARTIES

1. The Company will indemnify the Insured in the event of accident caused by or arising out of the use of the Motor Car against all sums including claimant's costs and expenses which the Insured shall become legally liable to pay in respect of

- (a) death of or bodily injury to any person except where such death or injury arises out of and in the course of the employment of such person by the Insured
- (b) damage to property other than property belonging to the Insured or held in trust by or in the custody or control of the Insured

2. The Company will pay all costs and expenses incurred with its written consent

3. In terms of and subject to the limitations of the indemnity which is granted by this Section to the Insured the Company will indemnify any Driver who is driving the Motor Car on the Insured's order or with his permission provided that such Driver

- (a) is not entitled to indemnity under any other Policy
- (b) shall as though he were the Insured observe fulfil and be subject to the terms, exceptions and conditions of this Policy in so far as they can apply.

4. In terms of and subject to the limitations of the indemnity which is granted by this Section in connection with the Motor Car the Company will indemnify the Insured whilst personally driving a private Motor Car (but not a Motor Cycle) not belonging to him and not hired to him under a hire purchase agreement.

5. In the event of the death of any person entitled to indemnity under this Policy the Company will in respect of the liability incurred by such person indemnify his personal representatives in the terms of and subject to the limitations of this policy provided that such personal representatives shall as though they were the Insured observe fulfil and be subject to the terms exceptions and conditions of this Policy in so far as they can apply.

6. The Company may at its own option (a) arrange for representation at any Inquest or Fatal Inquiry in respect of any death which may be the subject of indemnity under this Section and (b) undertake the defence of proceedings in any Court of Law in respect of any act or alleged offence causing or relating to any event which may be the subject of indemnity under this Section.

SECTION III.—MEDICAL EXPENSES

The Company will pay to the Insured the reasonable medical expenses not exceeding Rs. 350 in respect of any one accident incurred in connection with any bodily injury by violent accidental external and visible means sustained by the Insured or any occupant of the Motor Car as the direct and immediate result of an accident to the Motor Car.

AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY

Nothing in this Policy or any endorsement hereon shall affect the right of any person indemnified by this Policy or any other person to recover an amount under or by virtue of the provisions of the Motor Vehicles Act 1939 Section 96.

BUT the Insured shall repay to the Company all sums paid by the Company which the Company would not have been liable to pay but for the said provisions,

GENERAL EXCEPTIONS

The Company shall not be liable under this Policy in respect of

- (1) any accident loss damage and/or liability caused sustained or incurred outside the Geographical Area
- (2) any claim arising out of any contractual liability
- (3) any accident loss damage and/or liability caused sustained or incurred whilst any Motor Car in respect of or in connection with which insurance is granted under this Policy is
 - (a) being used otherwise than in accordance with the limitations as to Use or
 - (b) being driven by any person other than a Driver.

The Company shall not be liable in respect of any accident loss damage and/or liability directly or indirectly proximately or remotely occasioned by contributed to by or traceable to or arising out of or in connection with flood, typhoon, hurricane, volcanic eruption, earthquake or other convulsion of nature war invasion, the act of foreign enemies, hostilities or warlike operations (whether before or after declaration of war), civil war, strike, riot, civil commotion, mutiny, rebellion, military or usurped power or by any direct or indirect consequences of any of the said occurrences and except under Section II—1 (a) of this Policy whilst the Insured or any person driving with the general knowledge and consent of the Insured is under the influence of intoxicating liquor or drugs and in the event of any claim hereunder the Insured shall prove that the accident loss damage and/or liability arose independently of and was in no way connected with or occasioned by or contributed to by or traceable to any of the said occurrences of any consequence thereof and in default of such proof the Company shall not be liable to make any payment in respect of such a claim.

No-Claim Bonus :—

In the event of no claim being made or arising under this Policy during a period of insurance specified below immediately preceding the renewal of the Policy the renewal premium for such part of the insurance as is renewed shall be reduced as follows :—

Period of Insurance	Reduction.
The preceding year	10%
The preceding two consecutive years	15%
The years	20%
The years	25%
The preceding five or more consecutive years	33.1/3%

If the Company shall consent to a transfer of interest in this Policy the period during which the interest was in the Transferor shall not accrue to the benefit of the Transferee.

If more than one Motor Car is described in the Schedule the No-Claim Bonus shall be applied as if a separate Policy had been issued in respect of each such Motor Car.

CONDITIONS

This Policy and the Schedule shall be read together and any word or expression to which a specific meaning has been attached in any part of this Policy or of the Schedule shall bear the same meaning wherever it may appear.

1. Notice shall be given in writing to the Company immediately upon the occurrence of any accident or loss or damage and in the event of any claim and thereafter the Insured shall give all such information and assistance as the Company shall require. Every letter claim writ summons and/or process shall be forwarded to the Company immediately on receipt by the Insured. Notice shall also be given in writing to the Company immediately the Insured shall have knowledge of any impending prosecution Inquest or Fatal Inquiry in respect of any occurrence which may give rise to a claim under this Policy. In case of theft or other criminal act which may be the subject of a claim under this Policy the Insured shall give immediate notice to the Police and co-operate with the Company in securing the conviction of the offender.

2. No admission offer promise payment or indemnity shall be made or given by or on behalf of the Insured without the written consent of the Company which shall be entitled if it so desires to take over and conduct in the name of the Insured the defence or settlement of any claim or to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings or in the settlement of any claim and the Insured shall give all such information and assistance as the Company may require.

3. The Company may at its own option repair reinstate or replace the Motor Car or part thereof and/or its accessories or may pay in cash the amount of the loss or damage and the liability of the Company shall not exceed the actual value of the parts damaged or lost plus the reasonable cost of fitting and shall in no case exceed the Insured's estimate of the value of the Motor Car (including accessories thereon) as specified in the Schedule or the value of the Motor Car (including accessories thereon) at the time of the loss or damage whichever is the less.

4. The Insured shall take all reasonable steps to safeguard the Motor Car from loss or damage and to maintain it in efficient condition and the Company shall have at all times free and full access to examine the Motor Car or any part thereof or any driver or employee of the Insured. In the event of any accident or breakdown the Motor Car shall not be left unattended without proper precautions being taken to prevent further damage or loss and if the Motor Car be driven before the necessary repairs are effected any extension of the damage or any further damage to the Motor Car shall be entirely at the Insured's own risk.

5. The Company may cancel this Policy by sending seven days' notice by registered letter to the Insured at his last known address and in such event will return to the Insured the premium paid less the *pro rata* portion thereof for the period the Policy has been in force or the Policy may be cancelled at any time by the Insured on seven days' notice and (provided no claim has arisen during the then current period of insurance) the Insured shall be entitled to a return of premium less premium at the Company's Short Period rates for the period the Policy has been in force.

6. If at the time any claim arises under this Policy there is any other existing insurance covering the same loss damage or liability the Company shall not be liable to pay or contribute more than its ratable proportion of any loss damage compensation costs or expense. Provided always that nothing in this Condition shall impose on the Company any liability from which but for this Condition it would have been relieved under proviso (a) of Section II-3 of this Policy.

7. All differences arising out of this Policy shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree upon a single Arbitrator to the decision of two Arbitrators one to be appointed in writing by each of the parties within one calendar month after having been required in writing so to do by either of the parties or in case the Arbitrators do not agree of an Umpire appointed in writing by the Arbitrators before entering upon the reference. The Umpire shall sit with the Arbitrators and preside at their meetings and the making of an Award shall be a condition precedent to any right of action against the Company. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

8. The due observance and fulfilment of the terms conditions and endorsements of this Policy in so far as they relate to anything to be done or complied with by the Insured and the truth of the statements and answers in the said proposal shall be conditions precedent to any liability of the Company to make any payment under this Policy.

THE SCHEDULE

POLICY No. M. V.
The Insured : Name
Address
Business or Profession
Period of Insurance : (a) From to (Both dates inclusive)

(b) Any subsequent period for which the Insured shall pay and the Company shall agree to accept a renewal premium

Geographical Area : India and Burma

The Motor Car : Any of the following :—

Registration Mark	Make	Type of Body	Horse Power	Year of Manufacture	Seating Capacity including Driver	Insured's estimate of value including Accessories Rs.

Limitations as to use :

Use only for social domestic and pleasure purposes and for the Insured's business

The Policy does not cover use for hire or reward or for organised racing pace-making reliability trial speed-testing the carriage of goods (other than samples) in connection with any trade or business or use for any purpose in connection with the Motor Trade.

IMPORTANT NOTICE

THE INSURED IS NOT INDEMNIFIED IF THE VEHICLE IS USED OR DRIVEN OTHERWISE THAN IN ACCORDANCE WITH THIS SCHEDULE. ANY PAYMENT MADE BY THE COMPANY BY REASON OF WIDER TERMS APPEARING IN THE CERTIFICATE IN ORDER TO COMPLY WITH THE MOTOR VEHICLES ACT 1939 IS RECOVERABLE FROM THE INSURED. SEE THE CLAUSE HEADED "AVOIDANCE OF CERTAIN TERMS AND RIGHT OF RECOVERY."

Driver : Any of the following :—

(a)

(b)

Provided that the person driving holds a license to drive the Motor Car or has held and is not disqualified for holding or obtaining such a license.

Date of Signature of Proposal and Declaration :
Premium :

IN WITNESS whereof the undersigned being duly authorised by the Directors of the Company has/have hereunto set his/their hand at this day of 19

For THE....INSURANCE CO., LTD.

Examined

Entered

INSURANCE
APPENDIX D

MOTOR VEHICLES ACT, 1939
Certificate of Insurance

Certificate No.

- 1. Registration Mark and Number or Description of the Vehicle insured**
- 2. Name and Address of Insured**
- 3. Effective date of Commencement of Insurance for the purposes of the Act**
- 4. Date of Expiry of Insurance**
- 5. Persons or Classes of Persons entitled to drive**

Any person

Provided the person driving holds a license to drive the vehicle or has held and is not disqualified for holding or obtaining such a licence.

- 6. Limitations as to use**

The policy covers use for any purpose other than

- (a) Hire or reward
- (b) Organised racing or speed testing

I/WE HEREBY CERTIFY that the policy to which this Certificate relates as well as this Certificate of Insurance are issued in accordance with the provisions of Chapter VIII of the Motor Vehicles Act, 1939.

For THE...., INSURANCE CO., LTD.

(Authorised Insurer.)

SEAL

Examined.....

APPENDIX E

MOTOR CLAIM FORM.

Policy No.....

Claim No.....

THE.....INSURANCE COMPANY, LIMITED

THE ISSUE OF THIS FORM IS NOT TO BE TAKEN AS AN
ADMISSION OF LIABILITY.

Please do not disclose to any Third Party that you are insured and in no case admit your fault nor make any payment or offer of payment without the written authority of the Company.

Answer ALL questions and FULLY. It will avoid unnecessary correspondence and consequent delay in the settlement of Claim.

-
1. Name of Insured (in full).....
 2. Address
 3. Occupation
-

4. The Insured Vehicle.

- (a) Make.....(b) Horse Power.....(c) Registered No.....
 - (d) Price paid by the Insured.....(e) Year of manufacture.....
 - (f) Purpose for which it was being used at the time of accident.....
 - (g) Was it in proper order and condition at the time ?.....
 - (h) Was it being used with your knowledge and consent ?.....
 - (i) If the claim is in respect of a motor cycle state whether a Pillion passenger was being carried at the time of accident.....
 - (j) If the claim is in respect of a lorry, state whether a trailer was attached.....
-

5. The Person driving at the time of accident.

- (a) Full name of the person.....
 - (b) His address.....
 - (c) His age.....(d) Is he your permanent paid driver?.....
 - (e) Date and Number of License.....(f) Was it in force at the time of accident?.....
 - (g) Has it ever been endorsed or suspended? If so, give full details with dates....
 - (h) Is he entitled to indemnity under any other Company's Policy?.....
 - (i) Was he sober?.....(j) Is he, in your opinion, to blame?.....
-

6. The Accident. (Damage, Fire, Theft.)

- (a) Date of Occurrence.....(b) Time.....
- (c) Place (Street or Road and Town).....
- (d) Were you in the Vehicle?.....(e) If not, when was it reported to you?.....
- (f) On what side of the Street or Road was your vehicle and how far from the kerb?.....
- (g) What was the width of the Street or Road?.....
- (h) At what speed was the vehicle being driven before the accident?.....
- (i) And at what speed was it being driven at the time of the accident?.....

(j) Give full details of the nature and cause of the Accident/Theft/Fire.....
.....
.....
.....
.....
.....
.....
.....
.....

(k) If possible draw a sketch of the scene of accident.

7. The Damage.

(a) Give in detail the extent of all damage to the insured vehicle directly due to the accident.....
.....
.....
.....
.....
.....
.....

(b) Estimated cost of repairs Rs.....

(c) Where can the vehicle be inspected?

(d) Have you given instructions for repairs to be carried out? If so, to whom (Name and Address).....
.....

(e) Have you instructed them to send an estimate to the Company immediately?

N.B.—If possible an estimate of repairs should be attached to this form and in any event it must be sent to the Company without undue delay.

8. The Result.

(a) Has the accident caused any injury to any person or persons?.....
If so, give the following particulars:—

[illegible]

- (b) If any injured person has been removed to an Hospital or medically attended give name and address of the Hospital or Doctor.....
.....
- (c) Did the accident cause damage to property or live stock? If so, give name and address of the owner stating nature and extent of damage.....
.....
.....

9. General.

- (a) Has any claim been made upon you by any Third Party? If so, give details and attach the intimation.....
.....
- (b) If accident was caused by the fault of any third party, give name and address of such person/s.....
.....
- (c) How many persons were in the vehicle at the time of accident?.....
.....
- (d) Give the following particulars about all witnesses to the accident:

Name	Address.	Whether being conveyed in the vehicle or not.
.....
.....
.....
.....
.....
.....

- (e) Was the matter reported to the Police? If so, give name of the Police Station.....
.....
- (f) What action, if any, has been or is being taken by the Police or any other authority?.....
.....
.....
- (g) Give particulars of other insurance on the vehicle, if any.....
.....

I/We the abovenamed, do hereby, to the best of my/our knowledge and belief, warrant the truth of the foregoing statements in every respect; and I/We agree that if I/We have made, or in any further declaration the Company require in respect of the said accident, shall make any false or fraudulent statement, or any suppression or concealment, the Policy shall be void and all rights to recover thereunder in respect of past or future accident shall be forfeited.

Date.....19.....

Signature.....

Witness.....

CHAPTER XXVII

WORKMEN'S COMPENSATION INSURANCE

Principle of Workmen's Compensation

The origin of the principle underlying the workmen's compensation Acts is to be found, not in the civilization which produced the English Common law, but in the pretensions of economists of the continent. The measure is designed to correct what has become a very generally recognised evil. The object of the Act is to safeguard the workmen and their dependents against becoming objects of charity, by making reasonable compensation for all such calamities as are incidental to the employment. Economic loss to employees, owing to such calamities, should be regarded as an item of the cost of production of the goods on which the work was being done, and, as such, should be borne by the consumers of those products in the same manner as the destruction and obsolescence of the machinery is borne as a part of the cost of production. As a step to realise this object in practice, the cost is first to be assessed on the employer who produces the goods, and he is made responsible for indemnity to the injured in all cases without the question of fault or negligence as was the old theory. Of course in order not to remove from the employee all incentive to care, only partial indemnity is provided.

Workmen's Compensation Act

In England, the Employers' Liability Act was passed in 1880 but it became a comprehensive and effective enactment so late as that in 1906. On the model of this Act, in India, too, the Workmen's Compensation Act was passed in 1923 for the first time and since then it has been amended several times, the most drastic amendments having been made in

1934. According to this Act, 'if personal injury is caused to a workman by accident arising out of and in the course of employment, his employer shall be liable to pay compensation.' The measure of compensation too has been fixed by the Act. The Act also makes the employer liable if the employee contracts any of the specified occupational diseases peculiar to the employment. However, the employer is not liable in respect of any injury, which does not result in death and which is caused by an accident, which is directly attributable to (i) the worker having been under the influence of drink or drugs at the time of accident, or (ii) his wilful disobedience to an express order or rule meant for his safety, or (iii) his wilful removal or disregard of any safetyguard or other device meant for his safety to his knowledge. Hence, if the accident results in death due to any of the above causes, even then the employer is liable under the Act.

Workmen's Compensation Insurance

It has been observed that an employer is liable to compensate his employees in respect of personal injuries or certain occupational diseases under the Workmen's Compensation Act. He can transfer this liability of his to an insurance company by paying an appropriate premium and the insurance company will pay the compensation payable to the employees under the Workmen's Compensation Act. The employer has not to worry about his liability under the Act after he takes the insurance. Such an insurance is called "Workmen's Compensation Insurance" or "Employers' Liability Insurance." A distinction, however, is drawn between the two terms, whereby the latter term is used for the insurance of the employers' liability under the relevant Act, while the former term in addition to this also includes the compensation payable to the workmen under other Acts, such as Fatal Accidents Act, 1855 and Common Law.

Scope of the workmens' compensation Act

The Act protects the workers against employment injuries (including industrial injuries and diseases) who are employed on monthly wages not exceeding Rs. 400 per month¹ in any of the occupations specified in the Act itself. Persons whose employment is of a casual nature and who are employed otherwise than for purposes of the employer's trade or business are not included. Similarly employees working in a clerical capacity are also excluded. No compensation is payable in respect of an injury which does not result in the total or partial disablement of the workman for a period exceeding seven days. This period is known as the 'Waiting Period.'

In case of death, the compensation is payable to the employee's dependants. The word dependant includes (i) a wife, a minor legitimate son, unmarried legitimate daughter or a widowed mother and (ii) a husband, a parent other than a widowed mother, a minor illegitimate son, an unmarried illegitimate daughter, a minor brother and some other relatives, if these are wholly or in part dependant on the earnings of the employee at the time of his death.

The Compensation Payable

The results of injuries, so far as compensation is concerned, are divided into:—

- A. Death.
- B. Permanent Total Disablement.
- C. Permanent Partial Disablement.
- D. Temporary Disablement.

In each of the first three cases, provision is made for payment by lump sums. In the fourth case, payment is ordinarily to be in a series of half-monthly sums. In every case a distinction is drawn between adult and minors² because firstly a minor does not

1. In 1946 the limit was raised from Rs. 300 to Rs. 400.

2. A minor means a person under the age of 15 years.

ordinarily support a family and secondly he receives much lower wage. The amounts of compensation depend on the wages of the deceased or the injured employee prior to the accident. The following table shows the compensation payable for death and total disablement:—

Monthly wages of the workman injured		Amount of Compensation for		Half—monthly payment as Compensation for temporary disablement of Adult	
		Death of Adult	Permanent total Disablement of Adult		
1		2	3	4	
More But not than more than					
Rs.	Rs.	Rs.	Rs.	Rs.	As.
0	10	500	700	Half his monthly wages	
10	15	550	770	5	0
15	18	600	840	6	0
18	21	630	882	7	0
21	24	720	1,008	8	0
24	27	810	1,134	8	8
27	30	900	1,260	9	0
30	35	1,050	1,470	9	8
35	40	1,200	1,680	10	0
40	45	1,350	1,890	11	4
45	50	1,500	2,100	12	8
50	60	1,800	2,520	15	0
60	70	2,100	2,940	17	8
70	80	2,400	3,360	20	0
80	100	3,000	4,200	25	0
100	200	3,500	4,900	30	0
200	300	4,000	5,600	30	0
300	..	4,500	6,300	30	0

In case of a minor, the compensation payable for death is Rs. 200, and for permanent total disablement Rs. 1,200. Compensation payable for permanent partial disablement is such percentage of the compensation

which would have been payable in the case of permanent total disablement as is specified above in column 3 as being the percentage of the loss of earning capacity caused by that injury. In case of temporary disablement, a minor is entitled to one-half of his monthly wages, subject to a maximum of Rs. 30.

Loss of earning capacity in permanent partial disablement

The Act lays down an objective standard of percentage of loss of earning capacity in permanent partial disablement according to the nature of injury and the compensation payable in this case is calculated on this basis. The law has tried to make the worker feel as much certain as possible about the amount of compensation so that not much may be left on the judging capacities of the individuals who have to make an award. The following table will show the percentages of earning capacity by the different injuries as laid down by the Act:—

Injury.	Percentage of loss of earning capacity
Loss of right arm above or at the elbow.	70
Loss of left arm above or at the elbow.	60
Loss of right arm below the elbow.	60
Loss of leg at or above the knee.	60
Loss of left arm below the elbow.	50
Loss of leg below the knee.	50
Permanent total loss of hearing.	50
Loss of one eye.	30
Loss of thumb.	25
Loss of all toes of one foot.	20
Loss of one phalanx of thumb.	10
Loss of index finger	10
Loss of great toe	10
Loss of any finger other than index finger.	5

Occupational diseases

The Act also lays down certain occupational diseases which shall be deemed to be injuries by ac-

cident for the purposes of employer's liability for compensation. Anthrax, Lead poisoning, phosphorus poisoning, Mercury poisoning, poisoning by benzene and its homologues, chrome ulceration, compressed air illness or their respective sequelae have been listed as occupational diseases if they are contracted in the employments peculiar to them. All these have been specified in the Act itself.

The effecting of Insurance

An employer wishing to insure himself against his liability arising under the above Act can approach an insurance company for the purpose. He has to fill a proposal form supplied to him free of charge by the company. A specimen Proposal Form¹ is given at the end of the Chapter. The particulars required in this form are the name of the proposer; his trade or occupation; particulars of work; description of employees; their estimated number; estimated annual wages, salaries and other earnings; insurance coverage required; and other particulars regarding the nature of the work done in the employer's premises. He has also to state whether any proposal or renewal of insurance of his liability was ever declined or withdrawn. Lastly, he has to state the number of accidents to his employees during the past three years and the compensation paid in respect of them. In the end he has to sign the declaration that every information supplied in the proposal form is correct. The insurance is based on utmost good faith and any suppression or misstatement of material facts will avoid the contract.

Rating

The insurance company after receiving the proposal form will fix the premium. The companies which are the members of the Tariff Association will fix the premium according to the schedule prescribed

¹ See Appendix A.

by the Tariffs. The premium in a workmen's compensation insurance is determined by the class of work done by the employee and his estimated annual earnings. Generally, it is expressed as so many annas per cent. At the end of each period of insurance, the employer makes a return to the company of the amount actually paid in wages and the premium is adjusted accordingly.

Forms of Insurance

Usually the insurance companies issue policies covering indemnity to employers under any of the following forms:—

(A) Indemnity against legal liability for accidents to employees under the workmen's compensation Act, 1923, and subsequent amendments of the said Act prior to the date of issue of the policy, the Indian Fatal Accidents Act, 1855, and at Common Law.

(B) Indemnity against legal liability under the Indian Fatal Accidents Act, 1855 and at Common Law only.

(C) Indemnity against legal liability as under cases A or B above and in cases of injury for which no legal claim can be made for accidents to employees arising out and in the course of employment, here the compensation being payable on the basis as laid down in Workmen's Compensation Act, 1923. This form has been designed to meet the demands of the progressive employers who want to compensate the employees not covered under the said Act.

The premium will be different for the above three forms and the proposer has to mention in the proposal form as to which coverage he wants to insure.

Term of Insurance

Usually, a policy is issued for a period not longer than a year excepting for the additional odd time required to make the policy renewable on a particular date to meet the convenience of the insured.

The Policy

After the receipt of the premium the company will issue a policy which contains the policy number, name and address of the insured, his business, estimated number of employees, their occupations and estimated total annual earnings, place of employment, period of insurance and the premium. On the back of the policy, the conditions are printed. A specimen form¹ of policy together with its conditions is given at the end of the chapter.

Policy Conditions

According to the conditions of the policy, the employer must record the name of every employee together with the amount of wages, salary and other earnings in a proper wage book. The insured must allow the company at any time to inspect this book and should supply an abstract of this to the company within one month from the expiry of the period of insurance. The premium will be adjusted on the basis of this.

Whenever there is any accident or disease covered by the policy, the insured must at once give notice of this to the company and must forward to the company every written notice of information received relating to the claim. The insured should not, without the written authority of the company, incur any expense, litigation or make any payment, settlement or admission of liability covered by the policy. The company will bear all costs and expenses of defending or settling claims and the insured is bound to help the company in every possible way and allow it to use his name. The insured must take all reasonable steps to prevent accidents.

The liability of the company does not commence before the actual receipt of the premium and is over with the expiry of the period of insurance unless the policy is renewed by payment of renewal premium.

¹ See Appendix B

The policy contains a clause by which the liability towards sub-contractors is excluded unless it is covered by a specific mention of it after the payment of extra premium. The company can cancel the policy with three days' notice in which case the premium will be returned for unexpired period of insurance. Lastly, there is the arbitration clause which lays down that any dispute between the company and the claimant will be settled by arbitration according to the manner prescribed therein.

Settlement of claims

The insured must at once give the notice to the company of any accident or disease covered by the policy and the company will send a Claim Form¹ to him. The claim form requires the details about the employer, the injured person and the accident, in addition to a Statement of Wages regarding the employee injured. The insured must carefully supply all the information required therein and send it to the company without delay. The company on receiving the claim form will scrutinise it and ascertain whether the risk was covered under the insurance. It may also send its medical doctor to verify the truth of statements regarding the injury or disease. On being satisfied of the validity of claim the company will at once pay the amount of compensation but in case any difference of opinion arises regarding the expected durability of the disablement, the company may wait and meet the claim when the disability is over. The company undertakes to bear all costs and expenses of litigation in defending or enforcing the legal proceedings, if there be any.

WORKMEN'S COMPENSATION INSURANCE
APPENDICES

WORKMEN'S COMPENSATION INSURANCE

Agency.....

PROPOSAL FORM.

Proposer's Name in full.....

Proposer's Business Address.....

Proposer's Trade or Occupation.....

Particulars of Work.....

SCIENCEDULE (All Persons employed must be included.)

[illegible]

APPENDIX A (Continued)

The total amount of wages, salaries and other earnings paid by me/us during the past twelve months was Rs.

Do you wish to insure your liability under the Indian Workmen's Compensation Act, 1923 and subsequent amendments of the said Act prior to the date of issue of the Policy, to the workmen of contractors? (i.e. of "Contractors" as defined in the Act. see note.*)

If so, please state:—

Names of Contractors.	Nature of Work Sub-let.	If Contract for Labour and Material, state Estimated Amount of Contract.		If Contract for Labour only, state Amount of Contract.	
		Rs.	Rs.	Rs.	Rs.
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
TOTAL PREMIUM					

*The Workmen's Compensation Act, 1923, states that where any person (the "Principal") in the course of or for the purposes of his trade or business contracts with any other person (the "Contractor") for the execution by or under the Contractor of the whole or any part of the work which is ordinarily part of the trade or business of the Principal the latter is liable in respect of accidents to the Contractors' Workmen happening on in or about the premises on which the Principal has undertaken or usually undertakes to execute the work or which are otherwise under his control or management. In such cases the Principal is entitled to be indemnified by the Contractor.

- Does the above Schedule include—
(a) All persons in your service?
(b) All your contractors?
- Are you premises a Factory within the meaning of the Factory Acts?
- (a) Have you any circular saws or other machinery driven by steam, gas, water, electricity or other mechanical power? If so, give full particulars. ..
(b) Are your machinery, plant and ways properly fenced and guarded, and other wise in good order and condition?

INSURANCE

APPENDIX A (Continued)

<p>4. (a) Is your boiler registered under the Indian Boiler Act, 1923?</p> <p>(b) If not, under what conditions is it exempted from such registration?</p>	<p>(a)</p> <p>(b)</p>
<p>5. State what acids, gases, chemicals or explosives will be used and to what extent?</p>	
<p>6. Are you at present insured or have you ever proposed for an insurance in respect of your liability to your employees? If so, please give the name/s of the Company or Companies</p>	
<p>7. Has any proposal for an insurance in respect of your liability to your employees or renewal thereof ever been declined or withdrawn?</p>	
<p>8. State the total wages paid and particulars of accidents to your employees during the past three years :—</p>	<p>(a) Declined..... (b) Withdrawn.....</p>

Year	Total Wages, Salaries and other earnings	Total		Permanent Disablement		Temporary Disablement only		Cost
		Number Settled	Cost	Number Settled	Cost	Number Settled	Cost	
19.....	Rs. ....	.....	Rs. ....	.....	Rs. ....	.....	Rs. ....	.....
19.....	Rs. ....	.....	Rs. ....	.....	Rs. ....	.....	Rs. ....	.....
19.....	Rs. ....	.....	Rs. ....	.....	Rs. ....	.....	Rs. ....	.....
		Claims still Unsettled		Claims still Unsettled		Claims still Unsettled		
		Number. Estimated Cost		Number. Estimated Cost		Number. Estimated Cost		
		..... Rs. ....		..... Rs. ....		..... Rs.		

I/We, the undersigned, this.....day of.....191.....desire to effect an insurance in terms of the policy to be issued by the Company against my/our Statutory and Common Law Liability *and under the Table C of this prospectus as above mentioned. I/We agree to render, at the end of each period of insurance, a statement in the form required by the Company of all wages actually paid, and to pay premium on any wages paid in excess of the amount estimated above. I/We hereby declare that all the above statements and particulars, which I/We have read over and checked, are true, that I/We have not suppressed, misrepresented or misstated any material fact, that I/We have fairly estimated my/our total wages and salaries expenditure, and I/We agree that this declaration shall be the basis of the contract between me/us and The Insurance Company, Limited.

APPENDIX B

Workmen's Compensation Policy
(TABLE A.)

Policy No. W.

Estimated Amount of Wages,
Salaries and other Earnings Rs.

Date of Expiry :

Premium on above Rs.

WHEREAS

(hereinafter called "the Insured") of carrying on the business of insurance has made to ASSURANCE COMPANY LIMITED (hereinafter called "the Company") a written proposal and declaration dated containing certain particulars and statements which are the basis of this contract and are to be considered as incorporated herein :

NOW THIS POLICY WITNESSETH that in consideration of the payment to the Company of the above-mentioned premium (which premium is subject to adjustment as hereinafter provided) for the following indemnity from 4 P.M. Standard Time on the day of 19 to 4 P.M. Standard Time on the day of 19 , both days inclusive :

IT IS HEREBY AGREED that if at any time during the said period, subject to the receipt of premium as provided in the conditions hereunder and during the continuance of this Policy by renewal ; any Employee included in the Schedule hereto shall sustain any personal injury by Accident or by any Disease which, at the date of commencement of this Insurance, was described in Section 3(2) or Schedule III of the Workmen's Compensation Act, 1923, and subsequent amendments of the said Act, whilst engaged in the Insured's immediate service in an occupation and place of employment specified in the said Schedule hereto and if the Insured is liable to pay compensation for such injury either under the Workmen's Compensation Act, 1923, and subsequent amendments of the said Act prior to the date of the issue of this Policy the Indian Fatal Accidents Act, 1855, or at Common Law, then the Company shall indemnify the Insured against all sums for which the Insured shall be so liable and will in addition be responsible for all costs and expenses incurred with its consent in defending any claim for such compensation.

PROVIDED ALWAYS that the due observance and fulfilment of the conditions of this Policy (which conditions and all endorsements hereon are to be read as part of this Policy) shall so far as they relate to anything to be done or not to be done by the Insured be a condition precedent to any liability of the Company under this Policy.

SCHEDULE.

Estimated Number of Employees	Occupations of Employees	Estimated Total Salaries Wages and other money earnings of persons employed direct.	Value of board, lodging or other consideration in addition to money earnings	Estimated Total Wages	Place or Places of Employment

IN WITNESS whereof the undersigned being duly authorised by the Directors of the Company and on behalf of the Company has/have hereunto set his/their hand at this day of 19

Examined

Entered

CONDITIONS.

1. Every notice or communication to be given or made under this Policy shall be delivered in writing at the Head Office or any Branch Office of the Company.

2. The Insured shall give notice to the Company of any accident or disease covered by this Policy within 48 hours after the accident or disease comes to the knowledge of the Insured or of the being (and similar notice of any recurrence of such incapacity) and shall forward to the Company forthwith after receipt thereof, every written notice or information as to any verbal notice of claim and all other matters relating to the accident or disease.

3. The Insured shall not, without the written authority of the Company, incur any expense, litigation or otherwise, or make any payment settlement or admission of liability in respect of any injury for which the Company shall be liable under this Policy. The Company shall in respect of anything under this Policy be entitled to use the name of the Insured, including enforcing or settling of legal proceedings for the benefit of the Insured shall give all necessary information and assistance and forw enable the Company to settle or resist any claim as the Company may think fit and to enable the Company to enforce for the benefit of the Company any order made for costs or otherwise or any rights of indemnity vested in the Insured against third parties; and the Insured shall not contract himself out of any such rights not take upon himself any liability in excess of his statutory liability without the knowledge and written consent of the Company.

4. The Insured shall take reasonable precautions to prevent accidents and shall comply with all Statutory obligations.

5. The first premium and all renewal premiums that may be accepted are to be regulated by the amount of wages and salaries and other earnings paid by the Insured to Employees during each period of insurance. The name of every employee together with the amount of wages, salary and other earnings shall be duly recorded in a proper wages book. The Insured shall at all times allow the Company to inspect such book and shall supply the Company with a correct account of all such wages, salaries and other earnings paid during any period of insurance within one month from the expiry of such period of insurance. If the total amount so paid shall differ from the amount on which premium has been paid the difference in premium shall be met by a further proportionate payment to the Company or by a refund by the Company as the case may be.

6. Unless specifically included by endorsement hereon the indemnity granted under this Policy or any renewal thereof shall not apply to the Insured's liability to employees in the employ of sub-contractors to the Insured.

7. The Company shall not be liable in respect of any accident or disease occurring before the actual receipt of the premium by the Company or its authorised agents or in respect of any accident or disease occurring after the date of expiry and before the actual receipt of the premium for renewal.

8. The Company shall not be bound to accept any renewal premium nor to give notice that such is due and the Company may at any time by notice to the Insured cancel the Policy as from three days after the date when the Insured should receive such notice in the ordinary course of post, subject and without prejudice to any rights or claims, either of the Company or the Insured, arising under the Policy prior to that date, and the premium for the period from the commencement of the then current period of insurance to the date of cancellation shall be regulated as provided in Condition 5 above.

9. If any dispute shall arise as to whether the Company is liable under this Policy or as to the amount of its liability the matter shall be referred to the decision of an Arbitrator to be appointed in writing by the parties in difference or if they cannot agree to appoint a single Arbitrator to the decision of two disinterested persons as Arbitrators of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party. In case either party shall refuse or fail to appoint an Arbitrator within two calendar months after receipt of notice in writing requiring the appointment the other party shall be at liberty to appoint a sole Arbitrator and in case of disagreement between the Arbitrators the difference shall be referred to the decision of an Umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the Arbitrators and preside at their meetings. The death of any party shall not revoke or affect the authority or powers of the Arbitrator, Arbitrators or Umpire.

respectively, and in the event of the death of an Arbitrator or Umpire another shall in each case be appointed in his stead by the party or Arbitrators (as the case may be) by whom the Arbitrator or Umpire so dying was appointed. The cost of the reference and of the award shall be in the discretion of the Arbitrator or Arbitrators or Umpire making the award. And it is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such Arbitrator Arbitrators or Umpire shall be first obtained.

10. If the Company shall disclaim liability to the Insured for any claim hereunder and such claim shall not within twelve calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained and no notice of action shall have been received by the Company from the Insured within the said period of twelve calendar months then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

NOTICE TO THE INSURED.

No alterations in the terms and conditions of this Insurance, nor any endorsement hereon, will be held valid unless the same is recognised and initialled by an Official of the Company. No renewal receipts are valid unless they are on the printed office form and under the signature of a duly authorised Agent.

APPENDIX C

Claim No.....

REPORT OF ACCIDENT TO WORKMAN

The issue of this form is not to be taken as admission of liability nor answering these questions implies that the injured person is making, or will make, a claim.

If any detail of information is not readily available, please do not delay despatch of this report. Such particulars may be sent later.

All written communications should be forwarded to the Company.

THE EMPLOYER

1. Name of Policyholder	..	..	..	..
2. Business	..	..	..	..
3. Address (and nearest Railway Station)	..	..	..	..
4. No. of Policy	..	..	..	..

THE INJURED PERSON

1. Name	..	..	..	..	Age	Sex
2. Religion or Caste	..	..	..	..
3. Local Address	..	..	..	..
4. Mofussil Address	..	..	..	..
5. Name and Address of father	..	..	..	..
6. State occupation in which the injured person is employed	..	..	..	..
7. Was the injured person engaged in this occupation when the accident occurred? If not state fully the nature of the work he was doing at the time of the accident	..	..	..	..
8. Is the injured person in your direct employ? If not give name and address of Contractor	..	..	..	..

- | | |
|-----|--|
| 9. | When did the injured person enter your service? |
| 10. | Name of hospital taken to |
| 11. | In or out-patient |
| 12. | State whether still in hospital, or when discharged |
| 13. | Has the injured person been medically examined? If so, please send report. If not, was free medical examination offered? |
| 14. | State whether returned to work, and if so, when |
| 15. | Are you satisfied, the injured person has met with a <i>bona fide</i> accident of employment? |
| 16. | Is the injured person able to do partial work? |
| 17. | What is the probable period of the disablement (approximate)? |

THE ACCIDENT

- | 1. | Date | Time | Place |
|-----|---|------|-------|
| 2. | Upon what date did you receive notice of accident and from whom? If in writing please attach to this form | | |
| 3. | On what date did the injured person actually cease work? | | |
| 4. | State cause of accident; and if from machinery or gearing
(a) Whether it was fenced or guarded ..
(b) Was it being cleaned whilst in motion? .. | | |
| 5. | What was the general nature of the contract or work going on? | | |
| 6. | State nature of injury | | |
| 7. | State regions injured | | |
| 8. | State right or left side.. .. . | | |
| 9. | Was the injured person under the influence of drink or drugs at the time of the accident? | | |
| 10. | Was he guilty of any misconduct or disobedience to orders or rules? If so, please give full particulars | | |
| 11. | State through whose neglect it occurred, if any | | |
| 12. | State the names of any persons who witnessed the accident | | |

The above replies are correct to the best of my/jour knowledge and belief.

Date,.....19

Signature of Employer.

[P.T.O.]

STATEMENT OF WAGES

The object of this statement is to ascertain the injured person's average monthly earnings. Please therefore observe the following instructions very carefully. Failure to do so will entail unnecessary correspondence and cause undue delay in the settlement of the claim :—

1. If the injured person has been in the Employer's service during a continuous period of more than one month immediately preceding the accident, then the wages that have been paid, or fallen due for payment, to him in each month of such period (not exceeding twelve preceding months in all), must be entered in the statement.
2. If the injured person has been in the Employer's service for less than one month, then there must be entered in the statement the wages paid to another workman employed on the same kind of work by the Employer during the twelve months immediately preceding the accident.

[illegible]

- (a) Were the above stated wages paid, or fallen due for payment, to the injured person?
If not, state to whom.....

If not, state to whom.....

- (b) Was the injured person absent from work at any time, during the above stated period, for 14 or more consecutive days?.....

If so, give the following particulars:—

Absent for.....days from..... to.....

22 22 22 22 22 22

” ”

[illegible]

Date, 19

Signature of the Employer.

CHAPTER XXVIII

PERSONAL INSURANCE

Personal Insurance

It has already been observed in the second chapter¹ that all insurance contracts can be divided in four groups. Personal insurance is one of those four groups and deals with the protection against the cessation of the current earning power of the insured. Speaking from a strict economic viewpoint, the permanent loss of earning capacity amounts to an 'economic death', though the insured may be physically alive. Thus to an economist, death may be either actual, or retirement or living. The first type of death is called the 'casket death' and is provided for by the life insurance. The 'retirement death' means the loss of earning capacity in the old age which is provided either by endowment insurance or by annuity contracts. Both of these insurances have been dealt with at length in second part. The 'living death' is a result of the loss of earning capacity due to accident or health. It is the intention of this chapter to discuss these accident and health insurances.

Personal Accident Insurance

Origin of Accident Insurance

The introduction of railways in England resulted in the development of new insurance business. Many companies were formed to insure against death or injury from railway accidents and they soon extended the protection to accidents of other forms. The method of insuring against death by railway accidents was to charge 3d., 2d., and 1d., to a first, second and third class ticket for the insurance of £1000, £500 and £200 respectively. The distance of the journey was not a factor to be consi-

¹ See page 21

dered in fixing the premium rates. If the accident resulted in a casualty other than death a liberal compensation was provided for. Later on, by the Act of Parliament passed in 1864, the compensation was fixed at £6, £3 and £1½ per. week for insurances of £1000, £500 and £200 respectively for total disablement. In partial disablement, the compensation was fixed at one fourth of the above amounts. In all the above cases the limit for the benefits was fixed to 26 weeks.

Personal Accident Insurance defined

‘A Personal Accident Insurance’ is a contract, whereby the insurer agrees to pay to the insured, or to his personal representatives in case of death, stated sums in the event of his being killed, or totally or partially disabled by accident. It is not a contract of indemnity as it is not possible to measure the value of a man’s life or health in monetary terms. Limbs and eyesight cannot be measured in terms of money and they are irreplaceable; an artificial limb, despite all the progress of science, can in no way match the performance of the original limb. However, the principle of indemnity is not lost sight of completely and the companies do not issue policies as are incommensurate with the proposer’s financial condition. Hence no right of subrogation exists in favour of the insurance company against a third party whose negligence might have caused the injury for which compensation has been paid. Unless engaged in business, females are usually not insured against Personal accident and sickness insurance except for small amounts.

The word ‘accident’ has a restricted meaning in personal accident insurance and the policies granted to cover it confine the insurance to bodily injuries received “by violent, accidental, external, and visible means independently of any other cause.”

“Permanent Total Disablement” is immediate,

permanent, and absolute disablement from engaging in or giving attention to profession, business or occupation of any kind. "Temporary Total Disablement" is inability to attend to usual profession or business. Death or loss of limb or eye must occur within three calendar months after the injury.

Types of the Insurance Policies

The gradual growth of personal accident insurance in England has evolved three main classes of policy—

1. Accidents only.
2. Accidents and specified diseases.
3. Accidents and all sickness.

Each of the last two policies is but an extension of its predecessor and embodies all the benefits of the previous one. All these policies are issued only for one year and cannot be renewed after the insured has attained a certain age. But the premiums within the permitted age limits are same for the different ages because the element of age in personal accident insurance is not so important as in life assurance. There the mortality rate has a definite correlation with the increase in age, but in case of accidents the increase in the probability of greater exposure to risks due to decreased vitality with advancement of age is compensated by the greater prudence to avoid the risk in matured age. Therefore, the premiums do not vary according to the age of the insured but mainly depend upon the benefits sought for and remain uniform at all ages.

Essentials of a Valid Contract

Like all other contracts, the personal accident insurance is also a contract of utmost good faith and the proposer while filling the proposal form must correctly answer to the queries laid down in it. He must disclose all the facts material to the contract. Any concealment or mis-statement of material fact will render the contract invalid. Similarly, the proposer

must have insurable interest in the life insured. Usually the persons take policies on their own lives and for the purposes of insurance, they have sufficient insurable interest.

Classification of Risks

The premium depends on the measure of benefits asked for and the occupation of the proposer. The occupations for the purposes of fixing premiums have been classified into three groups.

Class I. *Ordinary Risks*. Solicitors, bankers, merchants, agents, clerks, tradesmen superintending only, and others whose occupations involve them in no undue risk.

Class II. *Extra Risks*. Shopkeepers and tradesmen working in non-hazardous employments, commercial travellers, manufacturers in certain trades superintending and occasionally working, and the like.

Class III. *Hazardous Risks*. Auctioners, builders, carpenters, engineers, tradesmen doing manual work and veterinary surgeons. Persons employed in extra-hazardous trades such as butchers, wood-working mechanists, horse-breakers, foresters, etc. are charged special rates.

Benefits

The premiums and the corresponding benefits have already been given in the beginning of this chapter in a railway accident insurance. Of course the rates have undergone changes from time to time owing to changed circumstances. Usually the compensation is in the form of a lump sum in case of death or loss of two limbs or two eyes, or of one limb and one eye; smaller sums for loss of one limb or one eye; payments at the rate of a stated sum per week during temporary total disablement, and at a lower rate during partial disablement upto 52 weeks, and annuities or fixed payments in the case of permanent disablement not otherwise compensated. Double benefits are insured when

the injury arises from accident to a passenger lift or train, tramcar, omnibus, licensed passenger vehicle, or is sustained in a burning building in which the insured has been since the inception of the fire.

When the insured has taken a life policy with the same company or if he is a total abstainer, the company allows him a reduction of premium.

Age limits

The age limits are usually from 16 to 60 for accident policies and 16 to 50 or 55 for sickness policies. The premiums are, of course, uniform in all ages and are payable in lump sum.

Exclusions

Policies always exclude suicide and self-inflicted injuries and also injuries received during a state of intoxication or insanity. Similarly the policies do not cover the children below the age of twelve. Again injuries or sickness directly or indirectly caused through war, invasion and venereal disease are not covered by such policies.

Renewal of Insurance

Usually the accident insurance policies can be renewed by a notice of renewal. The insured must disclose any change of material facts at the date of renewal. Usually a bonus in form of percentage increase in the policy amount for the same premium is allowed at every renewal not exceeding fifty per cent. in all. This is to encourage the insured to continue the insurance with the same company and the retention of old business is also less costly to the company. On the sixth renewal the premium is generally reduced by ten per cent. For the payment of renewal premium fifteen days of grace are allowed. Of course the company has every right to refuse the renewal of insurance if it so wishes.

Policy conditions

The policy lays down that if the insured changes his occupation to the more hazardous one than that mentioned in the proposal form, he must immediately inform the company which will reduce the indemnity to the sum which would have been secured by the premium paid. The policy also mentions the risks which are not covered under the policy. No alterations in the terms of the policy can be effected unless consented by the company. If any claim arises under the policy, the insured must at once give the notice of the accident to the company. The policy contains a provision for arbitration in case any dispute arises between the company and its policyholder. The policy also provides that the company may cancel the coverage at any time upon delivering a written notice to the insured in which case the unearned premium will be returned.

Settlement of claims

Whenever there is any accident, the policyholder must send a notice to the company as early as possible. The company will then send a claim form to the insured to be filled up and returned with a medical certificate. If the accident resulted in the death of the insured, his representative will fill up the form and send it with the certificate of death. On receipt of the claim form, the company will consult its medical adviser regarding the validity of the statements made therein. If the accident is of a minor nature, the company will settle the claim on the advice of the medical attendant of the insured. But if the injury is a serious one, the company will wait to see as to how long the disability continues and at the end of the disability period the insured and his medical attendant will have to fill other forms on the basis of which the claim will be settled.

In case of sickness insurance, the company will try

to settle the claim, after receiving the claim form and the medical certificate, on the basis of estimated duration of the disease. If this settlement is not accepted by the insured, the matter remains open until the end of the disablement or the expiration of the period for which the compensation is payable under the policy but the compensation will never be payable for a period longer than that prescribed in the policy, though the sickness may continue even beyond this period.

Permanent Sickness Insurance

Unlike the above three types of accident and sickness policies, this is a permanent contract and hence cannot be terminated at the end of the year. Like a life insurance policy, it also acquires surrender value. When the insurance is sought for, the searching enquiries are made at the time of proposal as to health or habits, and a medical examination is often required. This insurance has proved to be of immense value to professional men and others, whose incomes depend mainly upon their own work.

The premium is based upon the age and gradually increases with advancement in age. The other factor which determines the premium is the occupation. For lives which are underaverage on account of occupational hazards or unfavourable personal and family history, loading is added to the premiums. On change of occupation towards a more hazardous one, the insured must inform the company and the extra premium fixed by the company must be paid. The risk commences from the time the premium is paid. There are always restrictions imposed on the travel or residence of the insured. For the payment of renewal premiums usually a month's grace is allowed.

The policy covers all accident and sickness except those caused wilfully, or by riding races of any kind, or by breach of law, or by war or riot. The benefit be-

gins from the day the insured is disabled due to accident or sickness. He must send the notice of such disablement within a week to the company and also furnish periodical medical reports when required. The company has a right to examine the insured at any time during the disablement term.

Like a life policy, the sickness policy also contains clauses of proof of age, revival of lapsed policy and assignment. Usually, an arbitration clause is also found in the sickness insurance policies to settle the claims by arbitration in case there is any difference of opinion between the parties. Many companies also advertise guaranteed surrender values, but it is difficult to justify such a step.

CHAPTER XXIX

MISCELLANEOUS

War Risk Insurance

When the war breaks out human life and property falls an easy victim to its vagaries. With the complete mechanisation of the fighting weapons and the increased possibilities of aerial bombardment and submarine activities the destruction in terms of human life and property knows no bounds. The war-risk, to which the civilians are exposed, can be covered during peace times by the life insurance policies, and anybody, who wants to join the military after taking insurance policy, can do so by paying extra premiums. Some companies issue policies without any restriction to change of occupation and hence in such cases no additional premium is charged. The persons who are already in military can also take a life insurance policy covering the war-risk, but the premium

rate for them will be slightly higher. As the life insurance contract is a life long or a long period contract the policies issued in peace time continue to cover the policyholders even during the war-time. But in the latter case, anybody, who is either in military service or who wants to join military, can be granted insurance only after paying an additional premium which will depend upon the circumstances of war at that time. When the war is very imminent or the region is already under war operations, the premium goes very high. During the war time the governments of the various countries evolve schemes of insurance to cover the fighting forces against death by war.

Regarding the Insurance on property the case is not so simple. In peace time, usually the marine and fire insurance companies grant war-risk coverage by charging additional premiums. But when the war breaks out, the companies withdraw war-risk insurance from the policies as the dangers to the property assume unthinkable proportions.

Really speaking, to talk of war-risk insurance in the world of today is a myth when the human ingenuity has been able to bring out the weapons like atom bomb and we are further assured by the servants of humanity in laboratories of still more capable monstrous weapons. No scheme of insurance can work out successfully in the real theatres of war where the war-like operations are carried on. It has already been observed that for the successful working of an insurance project, certain conditions must be fulfilled. First of all a roughly accurate estimate of the losses must be made so as to fix the premiums in advance. Secondly, the number of the persons exposed to the risk must be far higher than the number of persons who will actually suffer, otherwise the premiums will be prohibitive. Thirdly, if possible, the cost of the scheme may be spread over a long period so as to reduce the cost to minimum per year. In view of

the above principles, let us examine the case of war-risk insurance. In order to fix the premium we must know the probable magnitude of losses and the time of their occurrence. If this can be known, the total losses may be spread over the intervening period and the premium be fixed per unit of property taking into consideration the value. Anybody familiar with the international situation in the political sphere can very well understand—if he is in his senses—as to how difficult it is to predict the next conflagration. Nobody could know in the beginning of 1939 whether the world-war would break out so soon. Even if it is granted that the time of the break out of a war can be precisely predicted, it would be a difficult task to make an estimate within some sensible range of truth about the losses of property in monetary terms. In cases of other types of insurance, such an estimate is possible on the basis of past records with the assumption that they will hold good in future too. No such assumption can be warranted in case of war losses. How foolish it would have looked to estimate the possible losses in the recent world-war caused by up-to-date destructive weapons on the experience of the Great War, when the speed and capacity to destroy were far less. What a progress!

Even if it is possible to make an estimate of losses, the further difficulty would be that when a country is involved in active warfare, the proportion of persons who actually suffer to the total insured population in the particular region or country will not be so small as it is in life or other insurances. There will not be much disparity in losses in the affected areas and this will cause the premium rate to be fixed up very high, because the insured persons will be mostly from those parts where there is any possibility of being attacked. Again, the premium cannot be spread over a longer period as the people are not very

much inclined to insure against war-risks during the peace time.

Hence, whenever a war breaks out, usually the insurance companies withdraw insurance against this risk and it is regarded the task of the government to afford protection to the public. In December 1941, in U.S.A. the War-Damage--Corporation with a capital of ten crores of dollars was set up to meet the demand for insurance against war-damage. The corporation insured individuals against direct physical loss or damage to the property which may result from enemy attack including any action taken by the military, naval or air forces of the United States in resisting enemy attack. The work of issuing policies, collecting premiums and assisting in adjusting losses was given over to fire and casualty insurance companies who worked as agents of the corporation on the basis of ten per cent. underwriting participation. In India, the Government made it compulsory on the factory owners and the industrialists to insure against war-risk and the premium was collected through the agency of the insurance companies on a commission basis. The premium collected was on a quarterly basis and, therefore, could be increased at the end of each quarter in view of the conditions of war affecting the country. It was feared that Japan would invade India and hence in order to effect an equal distribution of the war damage the scheme was launched, but as the conditions changed subsequently and the fears were not realized there were practically no claims on account of the war damage and the government got huge funds out of the scheme.

Third Party Insurance

Under the various laws of the country, a person may become liable for financial loss due to causing damage—actual or alleged—to the person or property of some third party. This legal liability can be insured

with an insurance company by paying the required premium. Such an insurance is called 'liability insurance' or 'third party insurance'. There are various classes of liability insurance and in many cases it is combined with other insurances, e.g., motor insurance is a combination of third party, property and accident insurances. The assured may be insured against all liabilities to third parties for accidents arising in connection with the use of motor vehicle, the vehicle itself may be insured for 'own damage' of all kinds, and the owner may be insured against all kinds of accident while driving his motor car. The other example of liability insurance is the employer's liability insurance where the employer is covered by insurance for his liability to his employees for accidents arising out of and in the course of employment. Both of these types of insurance have already been dealt with in detail. In addition to these, there are many other insurances where a person may become legally liable to third parties. Owners and occupiers of buildings and factories may become liable to their neighbours for negligence in handling the property. The liability may arise to owners of horses and horse-drawn vehicles for accidents arising from their use including loading and unloading, delivery to and from the vehicles and bites and kicks of the horses. All such risks can be covered by taking a third party insurance policy. In an insurance against liability, the liability of the assured must be a legal one. To determine his legal liability for injuries unintentionally caused to others, he must be found guilty of negligence. Negligence, in its legal sense, can be established, if the insured had a legal duty to use care and he failed to exercise such care though he never intended to cause the damage which actually followed. Again the third party so injured must not have been in any way negligent. If the insured is not proved guilty of negligence, the insurance company will not pay the claim

to the third party. An employer is liable for the results of negligence of his employees according to the legal maxim, "*Qui facit per alium facit per se*" (He who does a thing by another must be legally assumed to have done it himself). Of course the employer is responsible for the acts or omissions of his employees only when they arise in the course of employment. The employer can take out an insurance policy for such a liability which may arise on account of the negligence of his servants.

Whenever any loss arises, the court will determine the compensation to be payable by the party responsible for causing injury and this party, if insured, can get this compensation from the insurance company. Usually the insurance companies do not grant unlimited coverage under liability insurance but place a limit on the amount which can be recovered in respect of any one accident or series of accidents arising out of one occurrence. Frequently they also place limits in respect of the total sum payable in any one year. Many times these limits apply to compensation payable, legal and other costs being payable by the insurance company in addition thereto.

When the proposer wants to take a liability insurance, he must fill up a proposal form very correctly. It contains detailed questions regarding the name, address, the trade or business of the proposer, the nature and amount of indemnity required, past claims experience, previous proposals and insurances, etc. The premium is determined according to the nature and extent of the indemnity required. The proposer must observe complete good faith in giving answers to the questions. He must also take reasonable precautions to prevent accidents.

The important forms of liability insurance are (i) Property owners' indemnities, which cover the liability of an owner or an occupier of building towards invitees, licensees, trespassers, or to persons off the

buildings. (ii) General third party insurance, which provides an indemnity in respect of accidents occasioned by defects in the insured's ways, works, machinery, premises or plants. It also includes the damage caused by food and drink risks; bursting of bottles; sanitation risks; flood risks; lifts, hoists, and cranes; cricketers indemnities, amusements; golf clubs; guns; hairdressers, etc. (iii) Driver's indemnities. (iv) Scholars' indemnities, where management authorities may be liable for injuries done to students due to defects in buildings or appliances. (v) Professional indemnities to cover accountants, architects, chemists and druggists, doctors and dentists, etc: (vi) Lift insurance which may cover the liability for damages and injuries to third parties from accidents in lifts. The insurer inspects the lift and its machinery at intervals and sees that they are properly maintained.

Guarantee Insurance

A contract of guarantee is a contract to answer for the debt, default, or mis-carriage of another person, and it being also a promise to be answerable for a debt of, or a default in, some duty by that other person towards the promisee. In a contract of guarantee insurance, the 'insurer' is the party who, to a certain extent, undertakes under certain conditions as mentioned in the policy, to indemnify the insured against pecuniary loss arising through the acts of a third party sustaining a contractual relation to the insured. The 'insured' is the party whom the policy is issued and to whom the loss, if any, is payable. Guarantee insurance contracts may be divided into three classes: (i) Fidelity, (ii) Commercial and (iii) Judicial.

A 'fidelity insurance' is a form of guarantee insurance whereby the insurer, in exchange of a premium, agrees to indemnify the insured, in a designated amount against loss arising through the fraud, dis-

honesty, or unfaithfulness of a third party (usually his employee), sustaining a fiduciary relationship to the insured. The risks usually covered under this policy are those arising through fraud, dishonesty or negligence of the employee and includes larceny, embezzlement or want of integrity, honesty, or fidelity on the part of the employee in connection with the duties of the office or position in the service of the insured. The insured must disclose all material facts while filling up the proposal form so that the insurer may fully assess the risk. He must observe complete good faith and should not keep dishonest servants at the insurer's risk, when once he knows or reasonably suspects their dishonesty. Nor should he alter the terms of the employment, if the policy was granted on the faith of them. Whenever any loss arises under the policy, the insured must at once send the notice of claim. He must also send the proof of loss. If the insurer wants to prosecute the accused the assured must give all such aid and information as may be possible.

A 'commercial insurance' is a form of guarantee insurance whereby, for a stated premium, the insurer agrees to indemnify the insured, in a designated sum against losses sustained by the insured through breaches of contract by a third party having a non-fiduciary contractual relationship with the insured. The commercial insurance may be either 'contract' or 'credit' or 'title' insurance. In case of a 'contract insurance', the insurer agrees to indemnify against damage or loss arising through a failure on the part of third parties for specific performance of contracts. Such a cover is granted to secure the faithful performance by contractors, common carriers, warehousemen, apprentices, ship owners, importers, depositories, public builders, bankers, etc. The second type of commercial insurance is the 'credit insurance', where the insurer protects the insured against losses

arising through the insolvency of third parties to whom he might have sold goods on credit. This is also called "solvency insurance" or "Insurance of Debts." Similarly an insured holding debentures maturing on a particular date may take an insurance policy by which the insurer will guarantee that if the debtor makes default in payment of any particular money due under the debenture, he will pay it to the insured. Such an insurance is called 'debenture insurance'. The third type of commercial insurance is the 'title insurance', whereby the insurer, for a stipulated premium, agrees to indemnify the insured in a specified amount against loss through defects of title to real estate wherein the latter has an interest either as buyer or otherwise.

Lastly, 'the judicial insurance' refers to insurance bonds or policies issued in connection with a regular course of judicial procedure, either for the purpose of securing the faithful performance of duty on the part of the court of appointees or in order to guarantee due compliance with the terms of undertaking entered into by parties litigant before the courts. Here the insurer undertakes to indemnify the assured for any loss which he may sustain through the official misconduct of third party in his capacity as an apprentice of a court or through his failure to faithfully perform the conditions of his formal undertaking entered into while a litigant before a court.

It must be noted that in all types of guarantee insurance contracts the insurer undertakes to indemnify only upto a specified sum and not to the full extent of loss. The payment of premium is a condition precedent to the validity of the contract and the assured must observe complete good faith and comply with the conditions laid down in the policy.

Burglary Insurance

Loss of the property by theft or robbery has, from time immemorial, been a hazard to which the owners

of movables have been exposed. Burglary insurance policies are now very common which usually cover, as regards private dwelling-houses, loss by burglary, house-breaking and larceny, and as regards other premises, loss by burglary and house-breaking—the risk of larceny not being insurable as a rule in respect of business premises or places which are within the access of general public. The subject-matter in burglary insurance is always the movable property.

It is customary for the insurers to insist upon a signed proposal and as this is made the basis of the contract, every care must be exercised to see that the particulars given and the answers to the questions on it are absolutely correct. Any decline to insure or to renew a policy in past by other insurer is a material fact to be disclosed. Similarly the fact of previous losses suffered and the previous claims made is also material. Any inaccuracy or misrepresentation will invalidate the policy.

In case of 'private residence insurance' the proposer must declare the full value of the property. The premium will be fixed on this declared value. If the contents consist of a large proportion of valuables such as gold and silver articles, jewellery and furs, a higher premium rate is charged. If the house is left unoccupied for more than ninety days in any one year of insurance, notice must be given to the company and an extra premium paid. Theft by or with the connivance of a member of the insured's family is excluded and the larceny risk is uncovered whilst the house is lent, let or sublet. Similarly property removed for sale or exhibition is not covered.

In case of 'business premises insurance', the risks covered are only burglary and house-breaking. It is usual to have business premises surveyed before the rates are quoted. Many times the insurers insist on installing the safety measures in the form of fitting additional bolts, dead-locks or doors or bars on win-

dows, and automatic burglar alarms. There are two methods of insuring—the cover may be either for the full value of the property or it may be only for a smaller sum in which case it is called the ‘first loss’ policy. The premium rate in the latter is higher than that in the former.

While fixing the premium rates, the various factors are taken into consideration, viz., accessibility to burglars, degree of attractiveness of goods to burglars, class of neighbourhood, portability of the goods, un-occupancy during night hours, etc. At times “All risks” policies are also issued which cover almost all risks except those stated in the policy. Such policies are largely used for works of art sent to exhibitions and for cups and trophies temporarily held by the winners of competitions. This form is an extension of the burglary insurance on private residence.

Consequential Loss Insurance

Fire Insurance policies are issued to cover the direct material losses on account of fire done to the insured’s property and if the policy is taken for the full value the insured will be able to make good the buildings, plant, machinery, stock and the like which were destroyed or damaged by fire. But in addition to this direct material loss, the fire also causes other indirect immaterial losses in the form of the loss of profits owing to the interruption of business which is inevitable when the machinery or vital part of the factory has been damaged. The insured may not be able to execute the orders in hands or take new orders for a sufficiently long period. The loss of profit so incurred is a result of the fire, but only a secondary and consequential one; it cannot be ordinarily covered in a fire policy and hence a new form of insurance has developed to cover this risk. It is called ‘Consequential Loss Insurance’ or ‘Loss of Profits Insurance’ or also called ‘Profits Insurance’. The purpose of this class of insurance is to indemnify against only such trading

losses which arise solely and directly from a business falling off due to fire.

The standard policy of 'Consequential Loss Insurance' usually covers the risks—(a) Loss of net profit, (b) Standing charges, such as rent, rates and taxes; interest; salaries; and wages of permanent staff and other permanent expenses, (c) Increased working expenses due to the fire, such as rent of temporary buildings, hire of machinery, etc. The premium charged depends upon the length of the period of indemnity and upon the average rate for the insurance on the contents against fire. For the purposes of the settlement of claim, the loss of net-profits will be calculated by finding out the monthly decrease in turnover from the corresponding months of the previous financial year and applying to it the ratio which the sum insured (if it is upto the full value of net-profits of the past year) bears to the turnover for the last year. To the amount thus arrived at, the increased cost of working will be added. No claim on a consequential loss policy is payable until the fire claim has been paid or admitted.

Plate-Glass Insurance

Large glass plates are costly and are susceptible to breakage from many causes. A large mercantile firm may have to undergo loss of trade due to the temporary hoarding up of broken show-windows. The policies are issued to cover breakage of fixed glass and provide for the replacement without minimum delay. In order to allow for difficulties of procuring the services of skilled glass setters the company reserves to itself the right to settle the claims in cash. In most cases the insurers settle claims by instructing their glazing contractors to carry out replacement, rather than making a direct payment to the insured. Usually the risks of fire, scratches, damage to frames fixtures and fittings, and damage to goods in windows are not covered. Several of these risks can be covered on paying extra premiums. In addition to the windows, the

show-cases and shelves, light shades and mirrors can also be insured.

Premium is fixed on the area of each pane of glass in case of windows and higher charges are made for shelves and show-cases, which are more subject to breakage.

Crop Insurance

The general crop insurance may be granted to cover damage to crop caused by draught, blight, insect, pest, etc. The difficulty in this class of insurance arises on account of moral hazard in times of falling prices. However, this insurance is still in its infancy. Really speaking such an insurance cannot be successfully undertaken by private insurance companies and the state should take up this most important form of insurance. In India, there is a great need for the measure.

Live-stock Insurance

The insured is covered for the loss due to death of animals through accident or disease. Sometimes coverage is also granted for loss due to temporary total disablement. Usually the risks of slaughter without the insurer's consent and under Government orders are excluded. The risks of fire, lightning, transit by sea, surgical operations and breeding can be covered by paying extra premiums. The moral hazard is of special significance in live-stock insurance.

Rain Insurance

Rain insurance may be taken to cover the damage done by rain to the crops or hay. But usually the rain insurance is devised to cover the damages on account of unexpected showers in cases when long preparations are made either for some game or business exhibitions covering several days, fair, or public entertainments. The loss under the policy becomes payable only when a given amount of rain falls during the period specified in the policy. This type of insurance has been developed particularly in America.

Baggage Insurance

The insurance is granted to cover travellers against the risk of loss, larceny, or theft of, or damage to their baggage. The policy can be issued either for one country or world-wide. It does not include clothing on the persons, damage by moth or wear and tear, cash, notes, tickets, securities, etc. The basis of the policy is insurance for full value, and the protection applies during travel by land or sea and also whilst the assured is temporarily staying at hotels, boarding houses, or private dwelling houses.

Other Kinds of Insurance

In addition to the above types of insurance policies, there are many other forms as well. *Boiler insurance* may be taken to cover the damage to the boiler itself by its explosion or the liability to third parties in respect of such explosion or the liability for the death or injury of persons caused thereby. *Tornado or windstorm insurance* may be taken to cover the loss or damage by windstorms, cyclones, and tornadoes. *Hail insurance* is written to cover agricultural crops against material damage by hail. *Water damage insurance* is written to cover the damage caused by the leakage of water from the automatic sprinkler system installed to extinguish fire. *Aviation insurance* can be obtained to cover destruction or damage to the plane itself, or its contents, as well as damage to property on the ground caused by fall of planes, or of contents of planes. *License insurance* provides indemnity against financial loss resulting from the forfeiture of a license by virtue of which a business is carried on. *Weather insurance* policies are issued for holiday makers to pay a stipulated sum, should the rainfall during the period of a holiday exceed an agreed amount. *Cash in transit insurance* policies protect the insured against loss in respect of money stolen from, or lost by, messengers, clerks and other employees whilst it is being conveyed between the bank and

his premises. Similarly *goods in transit insurance* covers the loss of, or damage to, the goods in transit by the risks of fire, theft and damage. *Malpractice liability insurance* policy indemnifies professional practitioners for loss or expense arising or resulting from claims on account bodily injuries resulting from any malpractice, error, or mistake committed, or alleged to have been committed, by the insured in the practice of his profession.

Many other kinds of insurance can be mentioned, such as the bee-keepers' third party, building society indemnity, redeemable securities, hand disablement, doctor's bills, school fees, libel, wireless, beauty parlour liability, insurance against issue, names and arms insurance, pay and coupon insurance, insurance of dancers' legs and singers' throat, etc. New forms of insurance are continually arising and it can be said that it is possible to insure almost any calculable contingency which is outside the control of the proposer.

Social Insurance

We have so far dealt with such forms of insurance which protect an individual against particular uncertainties of life. But there are some other uncertainties which are created by the evils of social structure of the society and for which the individual has to suffer with no fault of his own, e.g., due to the industrialization under the system of private enterprise the workers may suffer in the form of sickness or ill health, absence of any protection during old age, accidents of the factory, unemployment in periods of depression, etc. Hence it is the duty of the state to provide for social security services in such cases. The protection so afforded is called the 'social insurance'. Usually for the successful and effective operation of such a scheme, the basis is the contribution from all the classes or groups concerned or benefitted, viz., the worker, the employer and the state. It means that the premium is to be collected from all the three parties in certain

stated proportions—not necessarily equal, and the scheme is run by the state rather than by the private insurance companies.

In the matter of social insurance, England is very much advanced amongst the countries with the capitalistic structure of economy. As early as 1911, the British National Insurance Act was passed which provided for insurance against unemployment and loss of health with prevention and cure of sickness. By this Act, unemployment insurance on a compulsory basis for some selected vocations was introduced in England, and the measure was extended in 1916 and then in 1920 bringing all the manual workers with a few exceptions and all non-manual workers having an annual income of not more than £250 within its fold. Similarly the State Compulsory Sickness Insurance system was introduced in 1911 and later on the Act was amended several times till in 1924 it became fully consolidated. The benefits were in the form of medical attendance, payment of compensation due to sickness or disability and maternity benefits.

In November, 1942, Sir William Beveridge submitted his Report on Social Insurance and Allied Services. This was an outline plan, covering "all citizens without upper income limit...all embracing in scope of persons and needs". This plan is the most comprehensive plan so far produced and was based upon three assumptions; first the institution of a scheme of children's allowances, second the framing of a comprehensive health service, and third the avoidance of mass unemployment. The scheme embraces the entire population of all ages, and all occupations, and recognises the right of all citizens to stand in together, without exclusions based upon difference of status, function or wealth. The benefits are in form of family allowances, orphan's allowance, sickness and unemployment's benefit, training allowance, sickness benefit for self-employed, dependent's allowance, retirement pensions,

etc. and are related with the different ways of life and requirements of different sections of community.

In India, however, no efforts were made to introduce any scheme like that of social insurance by the Government of India. The only piece of legislation in this direction is the Workmen's Compensation Act passed in 1923, but as the entire responsibility for compensation is placed on the employers and the employees are not required to contribute in any way, it cannot be called strictly a social insurance measure. Again like motor insurance there is no legal liability to insure under this Act. The details of the Act have already been explained previously. It was only in March 1943, that the Government of India appointed Prof. B. P. Adarker for preparing a health insurance scheme for industrial workers in India and the report was submitted in August 1944. But no action was taken to implement the scheme and it is only now that at last the Employees' State Insurance Act has been passed in April 1948. With the achievement of our freedom now it will not be very difficult to make a headway in the direction of social security. The above Act is restricted to factory workers but gradually will be extended to all categories of workers in the light of experience gained. The benefits provided for by this Act are sickness benefit, maternity benefit, disablement benefit and dependents' benefit. The scheme is compulsory and contributory—the contribution to be made by the employee, employer, and the state. The employees whose average daily wages are below one rupee are exempted from the contribution. All the contribution will be paid in a fund called the Employee's State Insurance Fund which shall be held and administered by a special body set up for the purpose called the Employee's State Insurance Corporation.¹ The government has already started taking steps for the implementation of the scheme.

1 The corporation has been formed on 1st October, 1948.

PART SIX
INSURANCE IN INDIA

CHAPTER XXX

INSURANCE IN INDIA

History of Life Insurance Business

Life insurance in its present form is a heritage from England. In India, the joint family system of Hindus had worked as an insurance institution for the past so many centuries and the dangers of old age, early death, livelihood of widows and children, etc., were very easily provided for in its fold. With the advent of large-scale industrialisation, the replacement of barter economy by money economy and the spread of individualism in social life, the joint family system has slowly disintegrated and all its attendant advantages are on the way to their gradual disappearance. On account of this factor, the need for modern insurance has become more urgent in the India of today, though owing to the fatalistic attitude of the masses, their poverty and ignorance, the development of life insurance business has been slow.

Very little is known about the early history of the insurance companies in India. Perhaps, the first company to make its appearance was the Oriental Life Assurance Company in 1818 in Calcutta started mainly by Europeans. Subsequently some other companies were also started but all these were British Companies floated in the United Kingdom and they mainly insured the lives of Europeans. This early period marked the attempts of many pioneer companies, Indian and English, for underwriting business in India.

In 1866, the Bombay Mutual Life Assurance Society was registered under the Indian Companies Act 1866 and Oriental Government Security Life Assurance Company Limited was floated in 1874. Both these companies started at this early period are still in exis-

tence and undoubtedly are the front-rank companies. By 1871, there were in all nearly fifteen companies working in India. The important feature of the insurance business during the last century was that most of the insurance companies—majority of them being foreign—were insuring only European lives and when they insured Indian lives, extra premium to the extent of nearly 10% was charged for them over the European lives rates. The reason for this discrepancy was the non-availability of any data regarding the mortality experience of Indian lives, on the basis of which independent premium rates could be fixed. Of course, some of the Indian Companies including the above two, charged the same rates for the Indian lives.

The dawn of the twentieth century witnessed a vigorous development of life insurance business in India. The Swadeshi Movement gave a great fillip to the Indian insurance companies. Old companies got more share of the business and several new companies were started. Many of the important companies working at present in India were the outcome of this period. Of course, several unsound concerns were also floated at this period, some of which died a natural death. In order to control the insurance companies in the public interest, the Government in 1912 passed the Insurance Act and the Provident Insurance Act on the models of similar Acts in England. As an effect of this step, some English companies ceased to write further business as they were required to submit reports to the Government of India. Indian companies had to improve their financial structure and those which could not conform to the provisions of the Act, had to liquidate. Then the war came, and its effect on the stock exchange securities was to reduce their value. As the insurance companies invested their funds mostly in these securities, the problem of investment became acute and the business dwindled; in 1916 it touched the lowest level. Apart from this financial aspect, there

was no other adverse effect of the war on the mortality experience of the insured lives. The end of war witnessed the floatation of many new companies. The post-war prosperity accounted for a large increase in the volume of new business. The non-co-operation movement of 1920-21 also secured larger patronage for the Indian companies and this enabled them to gain a stronger financial foothold. However, the development of life insurance business during this period had an unhealthy feature. Many new companies—foreign as well as Indian—were started, some of them were either closed or absorbed by the other companies. The defect of the most of the Indian companies lay in the fact that owing to greater competition the expenses had increased to uneconomic levels. The civil disobedience movement of 1930 and the spirit of Swadeshism prevailing in the country helped the Indian companies to tide over the stress of trade depression.

Upon an analysis of the nature of business done during this period, it is revealed that the endowment assurance accounted for nearly 70 to 80 per cent of the entire business. Again, practically all Indian insurance companies distributed at least 90 per cent. of their divisible surplus among the policyholders in the form of bonus. On a comparison, it is found that the average policy sum of the Indian companies is much lower than that of the foreign companies; it is so probably on account of the fact that the richer people (mostly Europeans) insure with the foreign companies. However, the Indian companies were feeling the pinch of competition from the foreign companies, but so far no united action was taken by them. In 1927 was formed the Indian Life Assurance Offices Association as a step for protecting the interests of Indian companies. The Association has justified its existence and has helped the member offices by pointing out their defects and suggesting remedies.

Insurance Legislation in India

Prior to 1912, there was no legislation exclusively applicable to insurance companies carrying on business in British India and they were governed by the provisions of the Indian Companies Act 1882. In the first decade of the present century, a large number of insurance companies and provident societies sprang up due to swadeshi movement. Many of these companies were unsound and the failure of some of these concerns led to an agitation for the control of insurance companies. In 1912, the Government realised that the provisions of the Indian Companies Act were not adequate for the control of the insurance companies and as such the Indian Life Insurance Companies Act and the Provident Insurance Societies Act were passed dealing with life insurance only. At that time very few Indian companies used to carry on non-life business and, therefore, as a result of the above Acts, the foreign companies which had almost a monopoly of the non-life business got complete freedom in their business.

The Indian Life Insurance Companies Act of 1912 was based on the model of the English Insurance Companies Act of 1909 with the difference that the Indian Life Insurance Companies Act related to life insurance only and excluded the non-life business from its fold. Even within the limited scope relating to life insurance business, the Act of 1912 had some defects: firstly, no provision was made for the deposit to be made by the foreign insurance companies; secondly, the deposits required from the Indian companies were also not sufficient to check the floatation of unhealthy concerns; thirdly, there was no restriction imposed on the investment of their funds; fourthly, the foreign companies were exempted from submitting particulars regarding their Indian business. Again, even if a company was known to be unsound, there was no

power given to the Government Actuary to order investigation.

As a result of the above defects, the law in India was not in line with the law in force in other countries. Persistent demands were made by various important public bodies in the country for statutory provisions which would provide for disclosure and publication of the business carried on in India by foreign companies. In 1924 the Government decided to amend the existing law in the country in the light of the above drawbacks. The Government of India went ahead and in 1925 a draft Bill of the proposed new Act intended to provide one comprehensive piece of legislation was introduced in the Legislative Assembly but the consideration of the Bill was postponed because the Government of India thought it fit to watch the course of new legislation on Insurance Law in England. In England, a committee presided over by Mr. A. C. Clanson, K.C., was appointed to revise the insurance legislation of that country. The Clanson Committee submitted its report in February 1927, but no action was taken on its recommendations by the Government of England. The Government of India in 1928 passed a stop-gap legislation with the main object of collecting statistics regarding insurance matters so that the information collected would be of value when the time would come to pass a comprehensive act.

At that time the Government of India wanted to await the United Kingdom legislation which was expected to be taken up in 1929 or so and base the law for India on the British model but the legislation was never passed in Britain. The slow progress of events in United Kingdom again revived the agitation for amendment of the law of insurance in India independently of the English statute. Due to this public pressure, the Government of India decided in 1935 to proceed with the reform of insurance law without

waiting for the British legislation. Mr. Sushil C. Sen, a well-known Calcutta solicitor, was placed on special duty to report on the amendments necessary to modernise insurance legislation and practice in India. His report was considered by the Advisory Committee appointed by the Government of India from representatives of all branches of insurance. The committee made several changes and the Government of India introduced the bill in the Legislative Assembly in 1937 and after much debate and several changes, it emerged as the Insurance Act of 1938. It came into force on 1st July, 1939.

This Act of 1938 has neither strictly followed the English principle of 'minimum interference with maximum publicity' nor the Canadian principle of 'direct control'. It provides for a strict control of insurance business and is really the first comprehensive piece of insurance legislation in this country, governing both life and non-life branches of insurance. So far the Indian companies are concerned, provision has been made in this Act: (i) to prevent the growth of mush-room companies; (ii) to enforce working on sound principles; (iii) to prevent misapplication of funds; and (iv) for the protection of assets. A few changes were introduced in the Act by amendments in 1939, 1940, 1941, 1944 and 1946.

Salient Features of the Act

(1) *Wide Scope.* The Act applies to all types of insurance business—life, fire, marine, etc.—done by companies incorporated in British India or elsewhere.

(2) *Deposits.* To prevent the growth of insurers of small financial resources or speculative concerns, the Act provides for registration of all insurers and a substantial deposit with the Reserve Bank.

(3) *Submission of Returns.* The Act provides for the creation of a post of Superintendent of Insurance and it is obligatory on all companies—including the

foreign ones—to submit all annual and quinquennial returns in the prescribed form within a stated period. The superintendent has been given wide powers to reject all incomplete and inaccurate returns, etc.

(4) *Prohibition of Rebating, restriction of commission and licensing of agents.* The provisions relating to these points have been framed to control the high costs on account of excessive rates of commission which naturally resulted in rebating to the assured the whole or part of the commission earned by the agents. The Act fixes maximum rate of commission at 40 per cent. of the first year's premium and 5 per cent. of the renewal premiums for the life business and 15 per cent. for non-life business. Rebate is completely prohibited. The agents have got to be licensed and the fee which was Rupee one is now increased to Rupee one and eight annas.

(5) *Investments.* It is laid down that 55 per cent. of the net life liabilities of an Indian or a British insurer should be invested in Indian Government and Approved Securities with at least 25 per cent. in Indian Government Rupee Securities. All other companies must invest 100 per cent. of their Indian liabilities in Indian Government and Approved Securities with at least one-third in Indian Government Rupee Securities. This provision has been made for the prevention of the misapplication of assets and for their preservation so that the funds of every insurer should not only be safely invested but they should also be so invested as to make them readily available and if necessary, to be readily convertible into liquid funds. With this end in view, the companies must maintain certain books, such as Register of Policies issued, Register of Claims, Register of Funds and Investments, etc.

(6) *Safeguard of Policyholders' Interests.* The policyholders can elect their representatives to the Board of Directors, the proportion being one-fourth of

the total number of Directors of the company. Again, the Act makes the policies indisputable after two years from the date on which they are effected. Further the provisions are made for informing the policyholder of the options available to him within three months of the non-payment of a premium due.

(7) *Restriction on Loans.* The insurer cannot grant loans or temporary advances to any director, manager, managing agent, actuary, auditor, etc., except on life policies issued by him within their surrender values. Managing agency has been abolished by the Act.

The Act was really a distinct improvement over the previous measures but it had its shortcomings. No attempt has been made to control the maximum expenses of the insurers and this has been the greatest weakness of the Indian insurers. There has been much criticism levelled by the insurers regarding limitation on investments and even today it remains the most controversial point. Due to the changed circumstances, the Act in spite of its many good points has become out-of-date and the time has come for its revision. The Government is also alive to the situation but on account of many controversial points, the measure has been postponed again and again. In 1946, two Insurance Amendment Bills were introduced in the budget session. The first Bill, which sought to remedy some administrative defects was passed, but the second Bill which was the outcome of a series of conferences, negotiations and adjustments was referred to the Select Committee which submitted its report in the budget session of 1947. But owing to the heavy legislative programme the Bill could not be dealt with then. This Bill contained the most drastic proposals and a huge storm of protest was raised over the whole country over its provisions. The points raging the controversy were mainly relating prevention of insurance companies from falling into the hands of

designing financiers, prevention of inter-locking of interests between insurance companies and banks, and control of investments. The Select Committee tightened up the provisions further in some respects. The Bill was expected to come up for consideration in the budget session of 1948 but the Commerce Member announced its withdrawal on 30th January, 1948 and assured to bring forward a new comprehensive Bill after consulting the various interests concerned. Towards the middle of 1948, the Government of India appointed an informal Expert Committee to examine and report on the law of insurance in India. It reviewed not only the sections of the Insurance Act 1938 from the point of view of the latest political changes in the country but also examined the provisions of the above referred Second Insurance Amendment Bill. The informal committee submitted its report towards the close of the year and its recommendations were approved by the Insurance Advisory Committee. It can be safely stated that very few Bills in the past suffered so much from the conflict of group interests. It is anticipated that a comprehensive Bill embodying the proposed changes will soon be placed before the Central Assembly and let us hope that its long and tortuous journey will now come to an end.

Present Position

Taking the period after the Great War as a whole, life insurance in India has shown good progress. The new life business written by Indian companies increased from Rs. 2 crores in 1917 to Rs. 43 crores in 1939 and to Rs. 131 crores in 1946. Similarly, business in force at the end of the above years has expanded from Rs. 24 crores to Rs. 215 crores and Rs. 514 crores respectively. These statistics also reveal that the rise was more marked during the war years. The war period boom can be attributed to a large outburst of industrial and other activities, currency expansion.

the total number of Directors of the company. Again, the Act makes the policies indisputable after two years from the date on which they are effected. Further the provisions are made for informing the policyholder of the options available to him within three months of the non-payment of a premium due.

(7) *Restriction on Loans.* The insurer cannot grant loans or temporary advances to any director, manager, managing agent, actuary, auditor, etc., except on life policies issued by him within their surrender values. Managing agency has been abolished by the Act.

The Act was really a distinct improvement over the previous measures but it had its shortcomings. No attempt has been made to control the maximum expenses of the insurers and this has been the greatest weakness of the Indian insurers. There has been much criticism levelled by the insurers regarding limitation on investments and even today it remains the most controversial point. Due to the changed circumstances, the Act in spite of its many good points has become out-of-date and the time has come for its revision. The Government is also alive to the situation but on account of many controversial points, the measure has been postponed again and again. In 1946, two Insurance Amendment Bills were introduced in the budget session. The first Bill, which sought to remedy some administrative defects was passed, but the second Bill which was the outcome of a series of conferences, negotiations and adjustments was referred to the Select Committee which submitted its report in the budget session of 1947. But owing to the heavy legislative programme the Bill could not be dealt with then. This Bill contained the most drastic proposals and a huge storm of protest was raised over the whole country over its provisions. The points raging the controversy were mainly relating prevention of insurance companies from falling into the hands of

designing financiers, prevention of inter-locking of interests between insurance companies and banks, and control of investments. The Select Committee tightened up the provisions further in some respects. The Bill was expected to come up for consideration in the budget session of 1948 but the Commerce Member announced its withdrawal on 30th January, 1948 and assured to bring forward a new comprehensive Bill after consulting the various interests concerned. Towards the middle of 1948, the Government of India appointed an informal Expert Committee to examine and report on the law of insurance in India. It reviewed not only the sections of the Insurance Act 1938 from the point of view of the latest political changes in the country but also examined the provisions of the above referred Second Insurance Amendment Bill. The informal committee submitted its report towards the close of the year and its recommendations were approved by the Insurance Advisory Committee. It can be safely stated that very few Bills in the past suffered so much from the conflict of group interests. It is anticipated that a comprehensive Bill embodying the proposed changes will soon be placed before the Central Assembly and let us hope that its long and tortuous journey will now come to an end.

Present Position

Taking the period after the Great War as a whole, life insurance in India has shown good progress. The new life business written by Indian companies increased from Rs. 2 crores in 1917 to Rs. 43 crores in 1939 and to Rs. 131 crores in 1946. Similarly, business in force at the end of the above years has expanded from Rs. 24 crores to Rs. 215 crores and Rs. 514 crores respectively. These statistics also reveal that the rise was more marked during the war years. The war period boom can be attributed to a large outburst of industrial and other activities, currency expansion,

lack of alternative avenues for investments to the middle class community, great reduction in unemployment, huge profits in industrial concerns and a large increase in the salaries of employees. Though the progress may be called satisfactory, it is clear that we have reached nowhere near the saturation point. If a comparison is made with the advanced countries, the backwardness of India in the matter of insurance can at once be realised. The *per capita* life assurance in U.S.A. and Canada is nearly 1,000 and 700 dollars respectively while that for India is just above Rs. 10 only. In America, 4 out of every 5 families possess protection of life insurance which averages about 4,700 dollars for every insured family. In India, 1 out of every 153 persons is insured and hardly 2.6 per cent. of population is covered by life insurance. The main reason for such a low standard lies in the fact that the people are very poor and there is left a very little margin for savings. With the industrialisation of the country and the consequent improvement in the economic condition of poverty-stricken masses, life insurance in India will have enormous field for expansion.

The number of insurers registered under the Insurance Act 1938 upto the 30th September, 1948 was 339. Out of these, 232 insurers were for the Dominion of India. Of these Indian Insurers, 191 transacted business is either life alone or with other class of business. There were 107 foreign companies transacting insurance business in India, out of which only 20 companies transacted business in either life alone or with other class of business. Thus it is clear that nearly 82% of the Indian insurers are transacting business wholly or partly in life insurance while the foreign insurers have their field mostly in the non-life business. Out of the 107 foreign insurers, as many as 67 are constituted in U.K. alone. At the end of 1947, the total number of policies in force was 29,36,000 of which 27,07,000 poli-

cies were insured with Indian* insurers. The total amount insured for was Rs. 640.07 crores of which the Indian share was Rs. 547.17 crores, nearly 84%. The premium income totalled Rs. 32.81 crores of which the Indian share was Rs. 26.98 crores, nearly 82%. The average sum insured per policy with Indian concerns was Rs. 2,177, and that by non-Indian concerns being Rs. 6,170.

A scrutiny of the above statistics will reveal that though the Indian insurers have a very large share of life insurance business, it must not be understood that the non-Indian insurers are completely insignificant. The Indian concerns have suffered much in the past due to the competition from the foreign insurers, particularly British, as they received a preferential treatment in the collateral services of banks, shipping and business in general. This handicap is sure to go as the Indian legislature is now sovereign, perfectly competent to safeguard the national interests in every possible way. The larger average assured amount per policy with the non-Indian insurers is due to the fact that the policyholders with them are mostly Europeans and rich persons. In this connection, however, it should be noted that the mere statutory safeguards and the appeal to patriotic sentiments would hardly help the Indian insurers to compete successfully with the foreign insurers who are still catering to the needs of a large number of our countrymen.

A comparative study of statistics regarding the life insurance for the last few years would show that the expansion of the business owing to the last world war is showing the signs to have come to an end and the inflated war time business is falling off. It seems that the boom period for life insurance business ended with the year 1946. The decrease in the net amount of life business effected in India during the year 1947

* The word 'Indian' includes Pakistan as well so far these statistics are concerned.

over that for the previous year was to the tune of nearly Rs. 18 crores, a reduction of about 12.5 per cent. in business. The main factor responsible for this position is the currency inflation and the consequent steep rise in the cost of living which resulted in the falling off of real income of the people. Therefore, with the curtailment in the ability to save, people have not purchased many new policies and there has been an increase in the lapses. The other factor causing the loss of new business was the abnormal situation existing in the country as a result of partition.

Upon an analysis of the working of the Indian insurance companies, it is found that the rate of interest realised on life insurance funds by them is gradually going down. This is mainly because of the cheap money policy followed by the Government of India. On the other hand, the ratio of their expenses of management to the premium income is gradually increasing except in the last year 1947 which shows a slight fall. This ratio is very high when compared to that of the non-Indian insurers for similar business in India. Though there are a few Indian insurers whose reputation is as high as that of some in the advanced countries of the world, this cannot be said of a substantial majority of our insurers. The recent increase in the expense ratio may be attributed to some extent to the increased management expenses in the form of increased salaries to the clerical staff, etc., but the greatest vulnerability of our insurers on the flank of management expenses remains an open secret even today. The lavishness of many insurers is alarming and the existence of small, uneconomic and unsound units is a very disquieting feature of the growth of our life insurance business. Thus on the one hand, there is a fall in income and on the other hand, the expenses are increasing and on account of this fact, most of the life insurance companies have increased their premium rates recently. This is likely to affect the insur-

ance business adversely. The insurers accuse the Government for this situation due its cheap money policy and taxation system, while the Government lays the blame on the insurers for their extravagance in the management expenses. However, the situation is a very crucial one at present and it is certain that the Government will have to be liberal in its taxation policy towards the insurance companies but that alone will not solve the problem until and unless the companies set their own house in order first and increase the efficiency of their management and economise the expenses at every possible score. The world today stands on the brink of another serious economic depression. If the all-round slump in production is any indication of the coming depression, India with its warborn and post-war-augmented shattered economy cannot afford to indulge in the luxury of being lost in the ideological controversies. A comprehensive plan for an increased output, curtailment of Government budgets specially on new projects, stabilisation of price level at a low stratum, austerity campaign at home and a vigorous export drive at the foreign front will go a great way to prevent the impending economic crisis from carving out deep furrows on the already shattered economy of India.

A P P E N D I X
IMPORTANT SECTIONS
OF
INDIAN INSURANCE ACT, 1938.

THE INSURANCE ACT, 1938.

(ACT IV OF 1938)

6. No insurer incorporated after, or who commenced carrying on the business of life insurance in British India, whether solely or in common with any other business, after the 26th day of January, 1937, shall be registered unless he has as working capital a net sum of not less than fifty thousand rupees exclusive of the deposit to be made before registration under sub-section (5) of section 7 of this Act, and exclusive in the case of a company of any sums payable as preliminary expenses in the formation of the Company.

7. (1) Every insurer not being an insurer specified in sub-clause (c) of clause (9) of section 2 shall, in respect of the insurance business carried on by him in British India, deposit and keep deposited with the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government¹ [the amount hereafter specified, either in cash or in approved securities estimated at the market value of the securities on the day of deposit, or partly in cash and partly in approved securities so estimated]:

Deposits

- (a) where the business done or to be done is life insurance only, two hundred thousand rupees;
- (b) where the business done or to be done is fire insurance, only one hundred and fifty thousand rupees;
- (c) where the business done or to be done is marine insurance only, one hundred and fifty thousand rupees;
- (d) where the business done or to be done² [is miscellaneous insurance only, that is to say, insurance which is not in the opinion of the Central Government principally or wholly of any kind or kinds included in clauses (a), (b), or (c)], one hundred and fifty thousand rupees;
- (e) where the business done or to be done³ (is) life insurance and any one of the three classes specified in clauses (b), (c), and (d), three hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;
- (f) where the business done or to be done³ (is) life insurance and any two of the three classes specified in clauses (b), (c), and (d), four hundred thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;
- (g) where the business done or to be done³ (is) life insurance and all three classes specified in clauses (b), (c) and (d), four hundred and fifty thousand rupees of which two hundred thousand rupees shall be the deposit for life insurance business;
- (h) where the business done or to be done does not include life insurance but⁴ (is) any two of the classes specified in clauses (b), (c) and (d), two hundred and fifty thousand rupees;
- (i) where the business done or to be done does not include life insurance but⁴

1. These words were substituted for the words "cash or approved securities estimated at the market value of the securities on the day of deposit of the amount hereafter specified namely" (with retrospective effect) by s. 4 of the Insurance (Amendment) Act, 1940 (20 of

(is) all three classes specified in clauses (b), (c) and (d). three hundred and fifty thousand rupees;¹

²(Provided that, where the business done or to be done is marine insurance only and relates exclusively to country craft or its cargo or both, the amount to be deposited under this sub-section shall be ten thousand rupees only.)

(3) Where the insurer is an insurer specified in sub-clause (c) of clause (9) of section 2, he shall be deemed to have complied with the provisions of this section as to deposits, if in respect of any class of insurance business³ (carried on) by him in British India under a standing contract of the nature referred to in sub-clause (c) of clause (9) of section 2 a deposit of an amount one-and-a-half times that specified in sub-section (1) as the deposit for that class of insurance business has been made in the Reserve Bank of India in one of the offices in India of the Bank for and on behalf of the Central Government in cash or approved securities estimated at the market value of the securities on the day of deposit by or on behalf of the underwriters who are members of the Society of Lloyd's with whom he has his standing contract.

(3) Where the deposit is to be made by an insurer incorporated before, or carrying on the business of insurance in British India before, the 27th day of January, 1937, the deposit referred to in sub-section (1) may be made in not more than seven instalments, of which the first shall be not less than one-fourth of the total amount of the deposit and shall be paid before the application for registration is made, the second shall be not less than one-sixth of the balance of the deposit and shall be paid before⁴ (the expiry of four months from the commencement of this Act), and the subsequent instalments shall be of not less than the minimum amount required as the second instalment and shall be paid before the 1st day of January of each succeeding year :

Provided that in the case of insurers carrying on life insurance business only, the deposit may be made in not more than ten instalments, of which the first shall be not less than one-fourth of the total amount of the deposit, and shall be paid before the application for registration is made, the second shall be not less than one-ninth of the balance of the deposit, and shall be paid before⁵ (the expiry of four months from the commencement of this Act), and the subsequent instalments shall be of not less than the minimum amount required as the second instalment, and shall be paid before the 1st day of January of each succeeding year.

(4) Notwithstanding anything contained in sub-section (3), in the case of an insurer⁶ (to whom that sub-section applies), not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit referred to in sub-section (1) shall be made in two instalments of which the first shall not be less than one-half of the total amount of the deposit and shall be made before the application for registration is made, and the second shall be made before the expiry of one year from the date of registration⁷.

(5) Where the deposit is to be made by an insurer neither incorporated before, nor carrying on insurance business in British India before, the 27th day of January, 1937, the deposit may be made in instalments of not less than one-fourth the total amount before the application for registration is made, not less than one-third the balance before the expiry of one year from the commencement of business in British India, and not less than one-half the residue before the expiry of two years from the commencement of business in British India, and the balance before the expiry of three years from the commencement of business in British India :

Provided that in the case of any insurer not being an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2, and not being an insurer incorporated in or domiciled in the United Kingdom, the deposit shall be made in full before the application for registration is made.

1. The word "and" and clause (j) were omitted by s. 4 of the Insurance (Amendment) Act, 1940 (20 of 1940).

2. This proviso was added, *ibid*.

3. These words were substituted for the word "transacted" by s. 3 of the Insurance (Amendment) Act, 1939 (11 of 1939).

4. These words were substituted for the words and figures "the 1st day of January, 1939," *ibid*.

5. These words were substituted for the words and figures "the 1st day of January, 1939" by s. 3 of the Insurance (Amendment) Act, 1939 (11 of 1939).

6. These words were inserted, *ibid*.

(6) No class of insurance business in addition to the class or classes in respect of which an insurer is already liable to make a deposit under sub-section (1) or sub-section (2) shall be undertaken by the insurer until the deposit to which he is already liable has been made in full, and the additional deposit required in respect of the additional class of business or so much thereof as under the provisions of sub-section (3), (4) or (5) is to be made before the application for registration has also been made in full.

(7) Securities already deposited with the Controller of Currency in compliance with the Indian Life Assurance Companies Act, 1912, shall be transferred by him to the Reserve Bank of India and shall, to the extent of their market value¹ (as at the date of commencement of this Act) be deemed to be deposited under this Act² (as the instalment or as part of the instalment to be made under the foregoing provisions of this section before the application for registration is made whether any such applicable is or is not in fact made).

(8) A deposit made in cash shall be held by the Reserve Bank of India to the credit of the insurer and shall³ (except to the extent, if any, to which the cash has been invested in securities under sub-section (9A)), be returnable to the insurer in cash in any case in which under the provisions of this Act a deposit is to be returned; and any interest accruing due and collected on securities deposited under sub-section (1) or sub-section (2) shall be paid to the insurer, subject only to the deduction of the normal commission chargeable for the realization of interest.

[4(9) The insurer may at any time replace any securities deposited by him under this section with the Reserve Bank of India either by cash or by other approved securities or partly by cash and partly by other approved securities, provided that such cash, or the value of such other approved securities estimated at the market rates prevailing at the time of replacement, or such cash together with such value as the case may be, is not less than the value of the securities replaced estimated at the market rates prevailing when they were deposited.

(9A) The Reserve Bank of India shall, if so requested by the insurer.—

(a) sell any securities deposited by him with the Bank under this section and hold the cash realised by such sale as deposit, or

(b) invest in approved securities specified by the insurer the whole or any part of a deposit held by it in cash or the whole or any part of cash received by it on the sale of or on the maturing of securities deposited by the insurer, and hold the securities in which investment is so made as deposit,⁵ (and may charge the normal commission on such sale or on such investment).

(9B) Where sub-section (9A) applies.—

(a) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) falls short of the market value of the securities at the date on which they were deposited with the Bank, the insurer shall make good the deficiency by a further deposit either in cash or in approved securities estimated at the market value of the securities on the day on which they are deposited, or partly in cash and partly in approved securities so estimated, within a period of two months from the date on which the securities matured or were sold or where the securities matured or were sold before the 21st day of March 1940, within a period of four months from the commencement of the Insurance (Amendment) Act, 1940; and unless he does so the insurer shall be deemed to have failed to comply with the requirements of this section as to deposits; and

(b) if the cash realised by the sale of or on the maturing of the securities (excluding in the former case the interest accrued) exceeds the market value of the securities at the date on which they were deposited with the Bank, the Central Government may, if satisfied that the full amount required to be deposited under sub-section (1) is in deposit, direct the Reserve Bank to return the excess.

(10) If any part of a deposit made under this section is used in the discharge of any liability of the insurer, the insurer shall deposit such additional sum in cash or approved securities¹ (estimated at the market value of the securities on the day of deposit, or partly in cash and partly in such securities) as will make up the amount so used. The insurer shall be deemed to have failed to comply with the requirements of sub-section (1), unless the deficiency is supplied within a period of two months from the date when the deposit or any part thereof is so used for discharge of liabilities.

15. (1) The audited accounts and statements referred to in section 11 and the abstract and statement referred to in section 13 shall be printed, and four copies thereof shall be furnished as returns to the Superintendent of Insurance² (in the case of the accounts and statements referred to in section 11 within six months

Submission of Returns and in the case of the abstract and statement referred to in section 13 within nine months) from the end of the period to which they refer.³

Provided that the said period of six months shall in the case of insurers having their principal place of business or domicile outside India and in the case of insurers constituted, incorporated or domiciled in British India but also carrying on business outside India be extended by three months, and provided further that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such returns by a further period not exceeding three months.

(2) Of the four copies so furnished one shall be signed in the case of a company by the Chairman and two directors and by the principal officer of the company, and, if the company has a managing director or managing agent, by that director or managing agent, in the case of a firm, by two partners of the firm, and, in the case of an insurer being an individual, by the insurer himself.

(3) Where the insurer's principal place of business or domicile is outside British India, he shall forward to the Superintendent of Insurance, along with the documents referred to in section 11, the balance-sheet, profit and loss account and revenue accounts and the valuation reports and valuation statements, if any, which the insurer is required to file with the public authority of the country in which the insurer is constituted, incorporated or domiciled, or, where such documents are not required to be filed, a certified statement showing the total assets and liabilities of the insurer at the close of the period covered by the said documents and his total income and expenditure during that period.

16. (1) Where by the law of the country in which an insurer, not being an insurer specified in sub-clause (1) (i) or sub-clause (b) of clause **Returns by Insurers established outside British India** (9) of section 2, is constituted, incorporated or domiciled, the insurer is required to prepare and furnish to a public authority of that country documents of substantially the same nature as the documents required to be furnished as returns in accordance with the provisions of section 15, the provisions of sub-section (2) of this section shall apply to such insurer in lieu of the provisions of sections 11, 12, 13 and 15.

(2) The insurer shall, within the time specified in sub-section (1) of section 15, furnish to the Superintendent of Insurance four certified copies in the English language of every balance-sheet, account, abstract, report and statement supplied to the public authority referred to in sub-section (1) of this section, and in addition thereto,⁴ (four certified copies) in the English language of each of the following statements, namely:—

(a) a statement⁵ (audited by a person duly qualified under the law of the insurer's country) showing the assets held by the insurer in India⁶ (as at the date of any balance-sheet so furnished);

1. These words were inserted by s. 4 of the Insurance Amendment Act, 1940 (20 of 1940).

2. These words and figures were substituted for the words "within six months" by s. 11 of the Insurance (Amendment) Act, 1941 (13 of 1941).

3. The words "The Superintendent of Insurance may extend the time allowed for furnishing the abstract and statement referred to in section 13 by a period not exceeding three months" were omitted, *ibid*.

4. These words were substituted for the words "four copies" by s. 7 of the Insurance (Amendment) Act, 1939 (11 of 1939).

5. These words were inserted by s. 7 of the Insurance (Amendment) Act, 1930 (11 of 1939).

6. These words were added by s. 12 of the Insurance (Amendment) Act, 1941 (13 of 1941).

(b) ¹(for each class or sub-class of insurance business for which he is required under sub-section (1) of section 13 to furnish a revenue account for the form or forms set forth in the Schedule appended to this class or sub-class of insurance business)²(and similarly audited), showing separately with respect to business transacted by the insurer in India the details required to be supplied in a revenue account furnished under this clause of this sub-section;

³[(c) a separate abstract of the valuation report in respect of all business transacted in India in each class or sub-class of insurance business to which section 13 refers, prepared in the manner required by that section, and;]

(d) a declaration in the prescribed form stating that all amounts received by the insurer directly or indirectly whether from his head office or from any other source outside India have been shown in the revenue account except such sums as properly appertain to the capital account.

18. Every insurer shall furnish to the Superintendent of Insurance a certified copy of every report on the affairs of the concern which is submitted to the members or policy-holders of the insurer immediately after its submission to the members policy-holders as the case may be.

Furnishing Reports Powers of Superintendent of Insurance regarding returns

21. If it appears to the Superintendent of (1) that any return furnished to him under the provisions of this Act is inaccurate or defective in any respect, he may—

(a) require from the insurer such further information, certified if he so directs by an auditor or actuary, as he may consider necessary to correct or supplement such return;

(b) call upon the insurer to submit for his examination at the principal place of business of the insurer in British India any book of account, register or other document or to supply any statement which he may specify in a notice served on the insurer for the purpose;

(c) examine any officer of the insurer on oath in relation to the return;

(d) decline to accept any such return unless the inaccuracy has been corrected or the deficiency

of the deficiency, ⁴and directed to the insurer to accept any such return, the insurer shall be deemed to have failed to comply with the provisions of section 15 or section 16 relating to the furnishing of returns.

(2) The Court may on application of an insurer and after hearing the Superintendent cancel any order made by the Superintendent under clause (a), (b) or (c) of sub-section (1) or may direct the acceptance of any return which the Superintendent has declined to accept, if the insurer satisfies the Court that the action of the Superintendent is in the circumstances unreasonable.

⁵(Provided that no application under this sub-section shall be entertained unless it is made before the expiration of four months from the time when the Superintendent of Insurance made the order or declined to accept the return).

22. If it appears to the Superintendent of Insurance that an investigation or valuation to which section 13 refers ⁶ (or an abstract of a valuation report furnished under clause (c) of sub-section (2) of section 16) does not properly indicate the condition of the affairs of the insurer in the valuation and giving investigation

Power of Superintendent of Insurance to order revaluation.
A valuation to be made at the expense of the insurer by an actuary appointed by the Superintendent of Insurance.

1. These words, brackets and figures were substituted for the words "for each class of insurance business carried on by him, a revenue account," *ibid*.

2. These words were substituted for the words "that class of business," *ibid*.

3. These words were inserted by S. 7 of the Insurance (Amendment) Act, 1939 (11 of 1939.)

4. This clause was substituted, *ibid*.

5. This proviso was added by s. 14 of the Insurance (Amendment) Act, 1941 (13 of 1941).

6. These words, brackets, letter and figures were inserted by s. 15, *ibid*.

INVESTMENT LOANS AND MANAGEMENT

27. (1) Every insurer incorporated or domiciled in British India shall, subject to the provisions of sub-section (3), at all times invest and hold invested assets equivalent to not less than fifty-five per cent. of the sum of the

Investment of assets and restriction on loans. amount of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 71 (or section 98) by the insurer in respect of his life insurance business and less any amount due to the insurer for loans granted by him on policies of life insurance² (maturing for payment in India and within their surrender values) in the manner following, namely, twenty-five per cent. of the said sum in Government securities and a further sum equal to not less than thirty per cent. of the said sum in Government securities or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom.

Explanation:—The provisions of this sub-section shall apply also to insurers incorporated in or domiciled in the United Kingdom.

(2) An insurer incorporated or domiciled elsewhere than in British India or the United Kingdom shall, subject to the provisions of sub-section (3), at all times invest and hold invested assets equivalent to not less than the sum of his liabilities to holders of life insurance policies in India on account of matured claims and the amount required to meet the liability on policies of life insurance maturing for payment in India, less the amount of any deposit made under section 73 (or section 98) by the insurer in respect of his life insurance business and less any amount due to the insurer on loans granted by him on policies of life insurance⁴ (maturing for payment in India and within their surrender values) in the manner following, namely, thirty-three and one-third per cent. of the said sum in Government securities and the balance in Government securities or other approved securities or securities of or guaranteed as to principal and interest by the Government of the United Kingdom.

(3) An insurer carrying on business at the commencement of this Act to whom sub-section (1) or sub-section (2) applies shall before the expiry of four years from the commencement of this Act invest the total amount required to be invested by those sub-sections in the manner required thereby:

Provided that of such total amount the insurer shall have invested not less than one-fourth in securities of the nature specified in sub-section (1) before the expiry of one year, not less than one-half before the expiry of two years, and not less than three-fourths before the expiry of three years from the⁵ (30th day of June 1939).

(4) The assets required by this section to be held invested by an insurer to whom sub-section (2) applies shall be held in trust for the discharge of claims of the nature referred to in sub-section (2) and shall be vested in trustees resident in British India and approved by the Central Government by an instrument of trust which shall be executed by the insurer and approved by the Central Government and shall define the manner in which alone the subject matter of the trust shall be dealt with.

Explanation:—Sub-sections (2) and (4) shall apply to an insurer incorporated in British India whose share capital to the extent of one-third is owned by, or the members of whose Governing Body to the extent of one-third consists of, individuals domiciled elsewhere than in British India or the United Kingdom.

29. ⁶[(1)] No insurer shall grant loans or temporary advances either on hypothecation of property or on personal security or otherwise, except loans on life policies issued by him within their surrender value, to any director, manager, managing agent, actuary, auditor or officer of the insurer if a company, or where the insurer is a firm

Prohibition of loans.

1. These words, and figures were inserted by s. 10 of the Insurance (Amendment) Act, 1939 (11 of 1939).

2. These words were inserted, *ibid.*

3. These words and figures were inserted by s. 10 of the Insurance (Amendment) Act, 1939 (11 of 1939).

4. These words were inserted, *ibid.*

5. These words and figures were substituted for the words "Commencement of this Act" by s. 5 of the Insurance (Amendment) Act, 1940 (20 of 1940).

6. Section 29 was re-numbered as sub-section (1) of that section by s. 19 of the Insurance (Amendment) Act, 1941 (13 of 1941).

to any partner therein, or to any other company or firm in which any such director, manager, managing agent, actuary, officer or partner holds the position of a director, manager, managing agent, actuary, officer or partner :

Provided that nothing herein contained shall apply to loans made by an insurer to a banking company :

Provided further that every existing loan to any director, manager, managing agent, auditor, actuary, officer or partner, notwithstanding any contract to the contrary, shall be repaid within one year from the commencement of this Act, and in case of default, such defaulting director, manager, managing agent, auditor, actuary, officer or partner shall cease to hold office on the expiry of one year from the commencement of this Act :

Provided further that nothing in this section shall prohibit a company from granting such loans or advances to a subsidiary company or to any other company of which the company granting the loan or advance is a subsidiary company.

(2) The provisions of section 86D of the Indian Companies Act, 1913, shall not apply to a loan granted to a director of an insurer being a company, if the loan is one granted on the security of a policy on which the insurer bears the risk and the policy was issued to the director on his own life, and the loan is within the surrender value of the policy).

30. If by reason of a contravention of any of the provisions of section 27 or section 29, any loss is sustained by the insurer or by the policy-holders every director, manager, managing agent, officer or partner who is knowingly a party to such contravention shall, without prejudice to any other penalty to which he may be liable under this Act, be jointly and severally liable to make good the amount equal to such loss.

31. None of the assets in British India of any insurer shall, except in the case of deposits made with the Reserve Bank of India under section 7² (or section 98) or in so far as assets are required to be vested in trustees by sub-section (4) of section 27, be kept otherwise than ³(in the name of a public officer approved by the Central Government, or) in the corporate name of the undertaking, if a company, or in the name of the partners, if a firm, or in the name of the proprietor, if an individual.

32. (1) No insurer shall, after the commencement of this Act, appoint a managing agent for the conduct of his business.

(2) Where any insurer engaged in the business of insurance before the commencement of this Act employs a managing agent for the conduct of his business, then, notwithstanding anything to the contrary contained

Limitation on employment of managing agents and on the remuneration payable to them. In the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in the articles of the insurer, if a company, or in any agreement entered into with a managing agent, the managing agent shall cease to hold office three years from the commencement of this Act, and the remuneration payable to him by the insurer by reason of his appointment as managing agent shall be limited to the amount payable to him by the insurer by reason of his appointment as managing agent.

(3) After the commencement of this Act, notwithstanding anything contained in the Indian Companies Act, 1913, and notwithstanding anything to the contrary contained in any agreement entered into by an insurer or in the articles of association of a company, no insurer shall pay to a managing agent and no managing agent shall accept from an insurer any remuneration for his services as managing agent.

1. This sub-section was added by s. 19 of the Insurance (Amendment) Act, 1941 (13 of 1941).

2. These words and figures were inserted by s. 12 of the Insurance (Amendment) Act, 1939 (11 of 1939).

3. These words were inserted, *ibid*.

ASSIGNMENT OR TRANSFER OF POLICIES AND NOMINATIONS.

39. (1) A transfer or assignment of a policy of life insurance, whether with or without consideration may be made only by an endorsement upon the policy itself or by a separate instrument signed in either case by the transferor or by the assignor or his duly authorised agent and attested by at least one witness, specifically setting forth the fact of transfer or assignment.

(2) The transfer or assignment shall be complete and effectual upon the execution of such endorsement or instrument duly attested but ¹(except where the transfer or assignment is in favour of the insurer) shall not be operative as against an insurer and shall not confer upon the transferee or assignee or his legal representative, any right to sue for the amount of such policy or the moneys secured thereby until a notice in writing of the transfer or assignment ²[(and) either the said endorsement or instrument itself or a copy thereof certified to be correct by both transferor and transferee or their duly authorised agents] ³(have been delivered) to the insurer.

4 * * * 5 (Provided that where the insurer maintains one or more places of business in British India, such notice shall be delivered only at the place in British India mentioned in the policy for the purpose or at his principal place of business in British India.)

(3) The date on which the notice referred to in sub-section (2) is delivered to the insurer shall regulate the priority of all claims under a transfer or assignment as between persons interested in the policy: and where there is more than one instrument of transfer or assignment the priority of the claims under such instruments shall be governed by the order in which the notices referred to in sub-section (2) are delivered.

(4) Upon the receipt of the notice referred to in sub-section (2) the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee and shall, on the request of the person by whom the notice was given, or of the transferee or assignee, on payment of a fee not exceeding one rupee, grant a written acknowledgement of the receipt of such notice, and any such acknowledgment shall be conclusive evidence against the insurer that he has duly received the notice to which such acknowledgment relates.

(5) ⁶(Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in sub-section (2)) recognise the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferor or assignor was subject at the date of the transfer or assignment and may institute any proceedings in relation to the policy without obtaining the consent of the transferor or assignor or making him a party to such proceedings.

(6) ⁷(Any rights and remedies of an assignee or transferee of a policy of life insurance under an assignment or transfer effected prior to the commencement of this Act shall not be affected by the provisions of this section).

(7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that it shall be inoperative or that the interest shall pass to some other person on the happening of a specified event during the ⁸(lifetime of the person whose life is insured) and an assignment in favour of the survivor or survivors of a number of persons, shall be valid.

1. These words were inserted by s. 14 of the Insurance (Amendment) Act, 1939 (11 of 1939).

2. This word was substituted for the words "together with" by s. 25 of the Insurance (Amendment) Act, 1941 (13 of 1941).

3. These words were substituted for the words "has been delivered," *ibid.*

4. The words "at his principal place of business in British India by or on behalf of the transferor or transferee" were omitted by s. 14 of the Insurance (Amendment) Act, 1939 (11 of 1939).

5. This proviso was added, *ibid.*

6. These words, brackets and figures were substituted for the words, brackets and figure (from the date of the receipt of the notice referred to in sub-section (2), the insurer shall), by s. 14 of the Insurance (Amendment) Act, 1939 (11 of 1939A).

7. This sub-section was substituted, *ibid.*

8. These words were substituted for the words "life of the policy-holder", *ibid.*

39. (1) The holder of a policy of life insurance ¹(on his own life^{2****}) may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death.

Nomination by policy holder.

(2) Any such nomination in order to be effectual shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on to the insurer and registered by him in the records relating to nomination may at any time before the policy matures for ¹ changed by an endorsement or a further endorsement or a will, as the case may be³ (but unless notice in writing of any such cancellation or change has been delivered to the insurer, the insurer shall not be liable for any payment under the policy made bona fide by him to a nominee mentioned in the text of the policy or registered in the records of the insurer).

(3) ⁴(The insurer shall furnish to the policy holder a written acknowledgment of having registered a nomination or a cancellation or change thereof, and may charge a fee not exceeding one rupee for registering such cancellation or change).

(4) A transfer or assignment of a policy made in accordance with section 38 shall automatically cancel a nomination :

⁵(Provided that the assignment of a policy to the insurer who bears the risk on the policy at the time of assignment in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its re-assignment on repayment of the loan shall not cancel a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy).

(5) Where the policy matures for payment during the ⁶(lifetime of the person whose life is insured), or where the nominee or, if there are more nominees than one, all the nominees die before the policy matures for payment, the amount secured by the policy shall be payable to the policy-holder or his heirs or legal representatives or the holder of a succession certificate, as the case may be.

(6) Where the nominee or, if there are more than one, a nominee or nominees survive the ⁷(person whose life is insured), the amount secured by the policy shall be payable to such survivor or survivors.

(7) The provisions of this section shall not apply to any policy of life insurance to which section 6 of the Married Women's Property Act, 1874, applies.

COMMISSION AND REBATES AND LICENSING OF AGENTS

40. (1) No person shall, after the expiry of six months from the commencement of this Act, pay or contract to pay any remuneration or reward whether by way of commission or otherwise for soliciting or procuring insurance business in India to any person except an insurance agent^{8 ****} or a person acting on behalf of an insurer who for the purposes of insurance business employs^{9****} insurance agents.

(2) No insurance agent^{8****} shall be paid or contract to be paid by way of commission or as remuneration in any form an amount exceeding, in the case of life insurance business, forty per cent. of the first year's premium payable on any policy or policies effected through him and five per cent. of a renewal premium, or, in the case of business of any other class, fifteen per cent. of the premium.

1. These words were inserted by s. 15 of the Insurance (Amendment) Act, 1939 (11 of 1939).

2. The words "not being an absolute assignee of the benefits under the policy," were omitted by s. 26 of the Insurance (Amendment) Act, 1941 (13 of 1941).

3. These words were added by s. 15 of the Insurance (Amendment) Act, 1939 (11 of 1939).

4. This sub-section was substituted, *ibid*.

5. This proviso was added by s. 26 of the Insurance (Amendment) Act, 1941 (13 of 1941).

6. These words were substituted for the words "lifetime of the policy-holder" by s. 15 of the Insurance (Amendment) Act, 1939 (11 of 1939).

7. "person whose life is insured," *ibid*.

8. "agent" was omitted by s. 10, *ibid*.

9. The words "insures" were omitted, *ibid*.

Provided that insurers, in respect of life insurance business only, may pay, during the first ten years of their business, to their insurance agents fifty-five per cent. of the first year's premium payable on any policy or policies effected through them and six per cent. of the renewal premiums.

(3) Nothing in this section shall prevent the payment under any contract existing prior to the 27th day of January, 1937, of gratuities or renewal commission 1(to any person whether an insurance agent within the meaning of this Act or not) or to his representatives after his decease in respect of insurance business effected through him before the said date.

41. (1) No person shall allow or offer to allow, either directly or indirectly, as an inducement to any person to² (take out or renew or continue) an insurance in respect of any kind of risk relating to lives or property in India any rebate of the whole or part of the commission payable or any rebate of the premium shown on the policy, nor shall any person taking out or renewing³ (or continuing) a policy accept any rebate, except such rebate as may be allowed in accordance with the published prospectuses or tables of the insurer.

1(Provided that acceptance by an insurance agent of commission in connection with a policy of life insurance taken out by himself on his own life shall not be deemed to be acceptance of a rebate of premium within the meaning of this sub-section if at the time of such acceptance the insurance agent satisfies the prescribed conditions establishing that he is a bona fide insurance agent employed by the insurer).

(2) Any person making default in complying with the provisions of this section shall be punishable with fine which may extend to one hundred rupees, unless the default is made by a person⁵ (taking out or renewing or continuing) a policy, in which case he shall be punishable with fine which may extend to fifty rupees only.

42. (1) The Superintendent of Insurance or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee which shall not be more than⁶ (three rupees) issue to any individual⁷ (making an application in the prescribed manner) and on suffering from any of the disqualifications hereinafter mentioned a licence to this act as an insurance agent for the purpose of soliciting or procuring insurance business.

agents.

(2) A licence issued under this section shall entitle the holder to act as an insurance agent for any registered insurer.

(3) A licence issued under this section shall be in force for a period of twelve months and the holder of the licence shall not suffer from any of the disqualifications mentioned in section 42(1) and shall pay a fee of one rupee from year to year on payment of the prescribed amount not exceeding one rupee by way of penalty if the application for renewal of the licence does not reach the issuing authority before the date on which the licence ceases to remain in force).

10(Provided that when any licence is issued or renewed within the year beginning on the day on which the Insurance (Amendment) Act, 1940, came into operation, the

1. These words were substituted for the words "an insurance agent" by s. 16 of the Insurance (Amendment) Act, 1939 (11 of 1939).

2. These words were substituted for the words "effect or renew" by s. 27 of the Insurance (Amendment) Act, 1941 (13 of 1941).

3. These words were inserted, *ibid*.

4. This proviso was added, *ibid*.

5. These words were substituted for the words "effecting or renewing" by s. 27 of the Insurance (Amendment) Act, 1941 (13 of 1941).

6. These words were substituted for the words "one rupee" by s. 28, *ibid*.

7. These words were substituted for the words "making an application under this section", *ibid*.

8. These words were substituted for the words, figures and letters, "shall expire on the 31st day of March in each year" by s. 9 of the Insurance (Amendment) Act, 1940 (20 of 1940).

9. These words were substituted for the words "a fee of one rupee" by s. 28 of the Insurance (Amendment) Act, 1941 (13 of 1941).

10. These provisos were inserted by s. 9 of the Insurance (Amendment) Act, 1940 (20 of 1940).

Superintendent of Insurance may specify the date, not being earlier than one year nor later than two years from the date of issue or renewal, on which the licence shall cease to be in force.

Provided further that the Central Government, may, by notification in the Official Gazette, make provision in respect of licences in force at the commencement of the Insurance (Amendment) Act, 1910, extending the period for which they are to remain in force by a term of from one to eleven months).

(4) The disqualifications above referred to shall be the following:—

(a) that the person is a minor;

(b) that he is found to be of unsound mind by a Court of competent jurisdiction;

(c) that he has been found guilty of criminal misappropriation or criminal breach of trust or cheating ¹(or forgery or an abetment of or attempt to commit any such offence) by a Court of competent jurisdiction;

²(Provided that, where at least five years have elapsed since the completion of the sentence imposed on any person in respect of any such offence, the Superintendent of Insurance shall ordinarily declare in respect of such person that his conviction shall cease to operate as a disqualification under this clause;)

(d) that in the course of any judicial proceeding relating to any policy of insurance or the winding up of an insurance company or in the course of an investigation of the affairs of an insurer it has been found that he has been guilty of or has knowingly participated in or connived at any fraud, dishonesty or misrepresentation ³(against an insurer or an insured).

(5) If it be found that an insurance agent suffers from any of the foregoing disqualifications, without prejudice to any other penalty to which he may be liable, the Superintendent of Insurance shall, and if the agent has knowingly contravened any provision of this Act may, cancel the licence issued to the agent under this section.

⁴(6) The authority which issued any licence under this section may issue a duplicate licence to replace a licence lost, destroyed or mutilated on payment of the prescribed fee which shall not be more than one rupee.]

43. (1) Every insurer and every person who acting on behalf of an insurer employs ⁵**** insurance agents shall maintain a register showing the name and address of every ⁵**** insurance agent appointed by him and the date on which his appointment began and the date, if any, on which his appointment ceased.

(2) Any individual not holding a licence issued under section 42 who acts as an insurance agent shall be punishable with fine which may extend to fifty rupees and any insurer who, or any person acting on behalf of an insurer who, appoints as an insurance agent any individual not so licensed, or transacts any insurance business in India through any such individual, shall be punishable with fine which may extend to one hundred rupees.

(3) The provisions of sub-section (2) shall not take effect until the expiry of six months from the commencement of this Act.

44. Notwithstanding anything to the contrary in a contract between any person and an insurance agent ⁶**** forfeiting or stopping payment of renewal commission to such insurance agent, no such person shall in respect of life insurance business done in India refuse payment to an insurance agent, of commission on renewal premiums due to him under the agreement by reason only of the termination of his agreement except for fraud:

Provided that such agent has served such person continually and exclusively for at least ten years, and provided further that, after his ceasing to act as agent, he does not directly or indirectly solicit or procure insurance business for any other person.

1. These words were inserted by s. 28 of the Insurance (Amendment) Act, 1911 (13 of 1911).

2. This proviso was added, *ibid*.

3. These words were substituted for the words "against an insurer or an assured", *ibid*.

4. This sub-section was added by s. 28 of the Insurance (Amendment) Act, 1911 (13 of 1911).

5. The word "licensed" was omitted by s. 29, *ibid*.

6. The words "licensed under section 42" were omitted by s. 30, *ibid*.

SPECIAL PROVISIONS OF LAW

45. No policy of life insurance effected before the commencement of this Act shall after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected,

Policy not to be called in question on ground of misstatement after two years.

be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement¹ (was on a material matter or suppressed facts which it was material to disclose and that it was fraudulently made) by the policy-holder and that the policy-holder knew at the time of making it that the statement was false² (or that it suppressed facts which it was material to disclose).

³(Provided that nothing in this section shall prevent the insurer from calling for proof of age at any time if he is entitled to do so, and no policy shall be deemed to be called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal).

47. (1) Where in respect of any policy of life insurance maturing for payment an insurer is of opinion that by reason of conflicting claims to or insufficiency of proof of title to the amount secured thereby or for any other adequate reason if it is impossible otherwise for the insurer to obtain a satisfactory discharge for the payment of such amount,⁴ (the insurer may) before the expiry of nine months from the date of the maturing of the policy,⁵ (or, where the circumstances

are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the insurer), apply to pay the amount into the Court within the jurisdiction of which is situated the place at which such amount is payable under the terms of the policy or otherwise.

(2) A receipt granted by the Court for any such payment shall be a satisfactory discharge to the insurer for the payment of such amount.

(3) An application for permission to make a payment into Court under this section shall be made by a petition verified by an affidavit signed by a principal officer of the insurer setting forth the following particulars, namely,

- (a) name of the insured person and his address;
- (b) if the insured person is deceased, the date and place of his death;
- (c) the nature of the policy and the amount secured by it;
- (d) the name and address of each claimant so far as is known to the insurer with details of every notice of claim received;
- (e) the reasons why in the opinion of the insurer a satisfactory discharge cannot be obtained for the payment of the amount; and
- (f) the address at which the insurer may be served with notice of any proceeding relating to disposal of the amount paid into Court.

(4) An application under this section shall not be entertained by the Court if the application is made before the expiry of six months⁶ (from the maturing of the policy by survival, or from the date of receipt of notice by the insurer of the death of the insured, as the case may be).

(5) If it appears to the Court that a satisfactory discharge for the payment of the amount cannot otherwise be obtained by the insurer it shall allow the amount to be paid into Court and shall invest the amount in Government securities pending its disposal.

1. These words were substituted for the words "was on a material matter and fraudulently" made by s. 31 of the Insurance (Amendment) Act, 1941 (13 of 1941).

2. These words were added, *ibid*.

3. This proviso was added, *ibid*.

4. These words were substituted for the words "the insurer shall" by s. 32 of the Insurance (Amendment) Act, 1941 (13 of 1941).

5. These words were inserted by s. 18 of the Insurance (Amendment) Act, 1939 (11 of 1939).

6. These words were substituted for the words "from the death of the insured, or the maturing of the policy by survival" by s. 18 of the Insurance (Amendment) Act, 1939 (11 of 1939).

(6) The insurer shall transmit to the Court every notice of claim received after the making of the application under sub-section (3), and any payment required by the Court as costs of the proceedings or otherwise in connection with the disposal of the amount paid into Court shall as to the costs of the application under sub-section (3) be borne by the insurer and as to any other costs be in the discretion of the Court.

(7) The Court shall cause notice to be given to every ascertained claimant of the fact that the amount has been paid into Court, and shall cause notice at the cost of any claimant applying to withdraw the amount to be given in every other ascertained claimant.

(8) The Court shall decide all questions relating to the disposal of claims to the amount paid into Court.

50. An insurer shall ¹(before the expiry of three months from the date on which the premiums in respect of a policy of life insurance were payable but not paid), give notice to the policy-holder informing him of the options available to him ²(unless these are set forth in the policy).

Notice of options available to the assured on the lapsing of a policy.

51. Every insurer shall, on application by a policy-holder and on payment of a fee not exceeding one rupee, supply to the policy-holder certified copies of the questions put to him and his answers thereto contained in his proposal for insurance and in the medical report supplied in connection therewith.

Supply of copies of proposals and medical reports.

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